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14:19:05 1 at times we have encounters people are yelling I
14:19:10 2 didn't do it, things like that, you're getting the
14:19:12 3 wrong person. Clearly we need probable cause, we
14:19:13 4 have to have sufficient amount of evidence to make
14:19:14 5 an arrest, so at the time we believe we have -- we
14:19:18 6 need to make an arrest and they yell that out, but
14:19:21 7 as far as being formally accused of false arrest,
14:19:24 8 not that I could recall.

14:19:26 9 Q. I'm more so talking about informally.
14:19:29 10 During the actual arrest and investigation of that
14:19:31 11 person, you know, how often does it happen where,
14:19:36 12 you know, you're at the scene on that day arresting
14:19:39 13 somebody and that person accuses you of falsely
14:19:42 14 arresting them?

14:19:43 15 MS. HUGGINS: Form. Asked and answered.

14:19:46 16 THE WITNESS: I -- I think I'm
14:19:48 17 misunderstanding. It does happen often when people
14:19:54 18 yell out, not every single day or every single
14:19:58 19 arrest, but there are times when you arrest people
14:20:01 20 and they don't want to go to jail or they try to
14:20:06 21 deflect away and it's not me, you have the wrong
14:20:07 22 person, if that's what you're considering false
14:20:08 23 arrest. I'm trying to understand.

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14:20:11 1 **BY MR. DAVENPORT:**

14:20:11 2 **Q.** Sure. So those times where somebody
14:20:18 3 says that, you know, it wasn't me, do you ever ask
14:20:22 4 that person any follow-up questions why it could
14:20:25 5 have been somebody else?

14:20:27 6 **A.** Well, at that --

14:20:27 7 **MS. HUGGINS:** Form.

14:20:27 8 **THE WITNESS:** At that point when we put
14:20:30 9 somebody in handcuffs and we place them under
14:20:32 10 arrest, we have probable cause to believe that they
14:20:35 11 did it, that they're the ones who committed that
14:20:38 12 crime.

14:20:39 13 **BY MR. DAVENPORT:**

14:20:39 14 **Q.** Okay. Has it ever happened where you
14:20:42 15 believe that you had probable cause and then later
14:20:44 16 determined that you did not actually have probable
14:20:45 17 cause for the arrest?

14:20:45 18 **A.** Not that I could recall.

14:20:46 19 **Q.** Okay. Now, it says that Mr. Kistner
14:21:00 20 said spontaneously to you and Ms. McDermott, if you
14:21:05 21 keep telling your lies so wildly, someone might
14:21:08 22 believe you, your story ain't going to fly,
14:21:12 23 internal affairs is going to eat your ass alive.

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14:21:16 1 At any time did you and Ms. McDermott on the
14:21:18 2 day of the incident speak to each other about what
14:21:22 3 Mr. Kistner was referring to?

14:21:23 4 A. Not that I could recall.

14:21:26 5 Q. At any time that was not January 1st of
14:21:31 6 2017, did you and Ms. McDermott ever speak about
14:21:34 7 this incident involving Mr. Kistner on January 1st
14:21:38 8 of 2017?

14:21:38 9 A. Yes.

14:21:39 10 Q. Okay. And when did you speak about it?

14:21:42 11 A. We spoke when we received paperwork
14:21:45 12 about, you know, we're going through this. And
14:21:50 13 then about scheduling, do you have to go in, you
14:21:54 14 know -- or, you know, as the process is going
14:21:55 15 along, we're new to the process, so when -- you
14:21:58 16 know, when are you going in, you know, just things
14:22:00 17 of that nature.

14:22:01 18 Q. Would you and Ms. McDermott go
14:22:04 19 together?

14:22:04 20 A. When?

14:22:05 21 Q. Well, I'm sorry, let's -- what do you
14:22:08 22 refer -- what do you mean by when you say we are
14:22:10 23 going in for this process, when -- what does that

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14:22:14 1 refer to?

14:22:14 2 A. To meet with our attorney.

14:22:16 3 Q. Okay. Would you and Ms. McDermott go
14:22:19 4 together?

14:22:19 5 MS. HUGGINS: Form.

14:22:21 6 THE WITNESS: I believe we may have
14:22:25 7 conferenced once or twice together.

14:22:26 8 BY MR. DAVENPORT:

14:22:26 9 Q. Okay.

14:22:27 10 A. I'm not certain.

14:22:28 11 Q. Okay. So when you guys are asking, are
14:22:32 12 you going in, it's not referring to, you know, a
14:22:35 13 carpooling situation or something like that, right?

14:22:38 14 A. Correct.

14:22:38 15 Q. Okay. What is Ms. McDermott's current
14:22:47 16 roll in the Buffalo Police Department?

14:22:49 17 A. She's a detective.

14:22:51 18 Q. Is she a detective in the C District?

14:22:54 19 A. No.

14:22:54 20 Q. Okay. Do you have any sort of a work
14:22:59 21 interaction with Ms. McDermott as a lieutenant of
14:23:02 22 the C District and her a detective in a separate
14:23:07 23 district?

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14:23:08 1 A. I don't recall if we've had any cases
14:23:10 2 that overlapped in the district, not that I can
14:23:14 3 recall right now. But if she would need
14:23:18 4 assistance, if one of her suspects were living in
14:23:21 5 my district, we may speak in regards to that, but
14:23:25 6 not that I could recall.

14:23:25 7 Q. Okay. Now, when you and Ms. McDermott
14:23:28 8 received the paperwork for this lawsuit, what did
14:23:31 9 you do next?

14:23:35 10 A. I don't recall.

14:23:37 11 Q. Did you speak with somebody in the
14:23:40 12 union about this lawsuit?

14:23:42 13 A. No, not that I could recall.

14:23:45 14 Q. Okay. What did you do with that
14:23:47 15 paperwork?

14:23:54 16 A. I did speak to the union. I was
14:23:57 17 advised to take our paperwork up to corporation
14:24:01 18 counsel.

14:24:01 19 Q. Okay. Did you take that paperwork
14:24:03 20 personally?

14:24:04 21 A. Yes.

14:24:04 22 Q. Okay. When you were handed that
14:24:06 23 paperwork, did you review the videos that were

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14:24:09 1 enclosed?

14:24:09 2 A. Yes.

14:24:10 3 Q. Did you review those on your own or did
14:24:14 4 you review them with the union representative?

14:24:17 5 A. On my own.

14:24:18 6 Q. And that would have been when you
14:24:20 7 initially received the paperwork?

14:24:22 8 A. Yes.

14:24:23 9 Q. Okay. Did you contact Ms. McDermott
14:24:25 10 after watching the video?

14:24:29 11 A. I know I contacted her as soon as I
14:24:32 12 received the packet for this -- the -- I don't know
14:24:37 13 whatever you want to call it, when I was served the
14:24:40 14 paperwork. I don't specifically remember calling
14:24:43 15 her after watching the video.

14:24:47 16 Q. When you did contact Ms. McDermott or
14:24:49 17 spoke with Ms. McDermott, did she say that she also
14:24:53 18 had watched the video?

14:24:57 19 A. I don't recall.

14:25:00 20 Q. Okay. Did you speak with either Carl
14:25:03 21 Schulz or Kyle Moriarity about the paperwork when
14:25:08 22 you received the complaint?

14:25:09 23 A. Yes.

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14:25:09 1 Q. Okay. At what point did you speak with
14:25:14 2 those individuals?

14:25:15 3 A. I believe it was the same day that we
14:25:18 4 were served.

14:25:18 5 Q. Okay. Did you contact all of them
14:25:22 6 individually?

14:25:23 7 A. Yes.

14:25:24 8 Q. What did you all say about the
14:25:29 9 complaint?

14:25:29 10 MS. HUGGINS: Form.

14:25:30 11 THE WITNESS: I just -- it was so long ago.
14:25:33 12 I vaguely remember just saying, hey, I was just
14:25:37 13 served with this lawsuit. I don't know if one is
14:25:40 14 coming to you, but we were all there for the
14:25:40 15 incident.

14:25:43 16 You know, let me know if, you know,
14:25:45 17 you -- you get paperwork as well. And then I
14:25:47 18 remember them all responding I got -- I received
14:25:49 19 paperwork as well.

14:25:50 20 Q. Okay. Was that a phone conversation?

14:25:52 21 A. Yes.

14:25:52 22 Q. Okay. No text messages?

14:25:55 23 A. No.

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14:25:57 1 Q. Okay. With Ms. McDermott did you talk
14:26:00 2 about any of the contents of the complaint?

14:26:02 3 A. Not that I could recall.

14:26:04 4 Q. Any of the specific allegations that
14:26:06 5 were made?

14:26:06 6 A. Not that I could recall.

14:26:08 7 Q. Okay. Do you know what the disposition
14:26:13 8 was of Mr. Kistner's criminal charges?

14:26:16 9 A. No.

14:26:16 10 Q. As you sit here today, you do not know?

14:26:19 11 A. Well, I sat in for Officer McDermott's
14:26:23 12 deposition, I learned that day what had happened,
14:26:26 13 but at the time up until last week I had no idea.

14:26:29 14 Q. Okay. After receiving that initial
14:26:32 15 paperwork and aside from contacting Ms. McDermott
14:26:36 16 about whether you would be going to go speak with
14:26:39 17 your attorney, have you had any other conversations
14:26:43 18 with any of the other defendants?

14:26:45 19 MS. HUGGINS: Form.

14:26:45 20 BY MR. DAVENPORT:

14:26:46 21 Q. Outside of the presence of your
14:26:47 22 attorney?

14:26:47 23 A. In regards --

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14:26:48 1 MS. HUGGINS: Same form objection. You can
14:26:51 2 answer.

14:26:51 3 THE WITNESS: I'm sorry. Can you repeat
14:26:53 4 that again?

14:26:53 5 BY MR. DAVENPORT:

14:26:54 6 Q. Aside from conversations with the other
14:26:57 7 defendants the day that you received the paperwork
14:26:59 8 and aside from conversations that you had with
14:27:03 9 Ms. McDermott about times that you would have been
14:27:06 10 going to go meet with your attorney, have you had
14:27:09 11 any other conversations with any of the other
14:27:11 12 defendants who are named in this lawsuit?

14:27:13 13 A. Regarding in general or regarding?

14:27:17 14 Q. Regarding this complaint and lawsuit
14:27:19 15 specifically.

14:27:20 16 A. Again, just with the scheduling.

14:27:22 17 Q. Okay. Are you aware that there was a
14:27:27 18 news report that was done on this incident?

14:27:28 19 A. Yes.

14:27:29 20 Q. Okay. Did you contact any of the
14:27:31 21 officers to discuss that news report?

14:27:33 22 A. To discuss it, no.

14:27:40 23 Q. Okay. Now, is there a signature

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14:27:45 1 page for this 710.30 form?

14:27:48 2 A. No.

14:27:49 3 Q. Okay. So officers aren't required to
14:27:52 4 sign off on these statements that are authored?

14:27:58 5 A. Excuse me. Can you repeat that?

14:27:59 6 Q. Officers aren't required to sign off on
14:28:01 7 a 710.30 form?

14:28:01 8 A. No.

14:28:02 9 Q. Okay. Did you ever receive any
14:28:05 10 training on how to fill out a 710.30 form?

14:28:08 11 A. In the academy.

14:28:09 12 Q. Which academy, the Buffalo?

14:28:11 13 A. The Erie County --

14:28:13 14 Q. Okay.

14:28:13 15 A. -- training academy.

14:28:15 16 Q. And never with the Buffalo Police
14:28:17 17 Department?

14:28:17 18 A. Correct.

14:28:19 19 Q. Okay.

14:28:19 20 A. That I can recall.

14:28:20 21 Q. Okay.

14:28:31 22 MR. DAVENPORT: Can we mark this as
14:28:34 23 Exhibit 26.

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14:28:34 1 The following was marked for Identification:

2 EXH. 26 Arresting Report

14:29:09 3 BY MR. DAVENPORT:

14:29:10 4 Q. I'm going to show you what's been
14:29:13 5 marked as Exhibit 26. Do you recognize that
14:29:18 6 document?

14:29:18 7 A. Yes.

14:29:19 8 Q. And what do you recognize it to be?

14:29:21 9 A. An arrest booking report.

14:29:23 10 Q. Okay. Who would have created the
14:29:25 11 arresting or booking report?

14:29:28 12 A. I'm not certain if this is the report
14:29:30 13 technician or the cellblock attendant enters the
14:29:36 14 information for it.

14:29:36 15 Q. But this would have been a document
14:29:40 16 that's created by somebody at central booking?

14:29:42 17 A. Correct.

14:29:43 18 MS. HUGGINS: Form.

14:29:43 19 BY MR. DAVENPORT:

14:29:44 20 Q. Okay.

14:29:45 21 A. I believe so.

14:29:45 22 Q. Do you know an individual named
14:29:48 23 Christine Young?

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14:29:49 1 A. No.

14:29:51 2 Q. Is it possible that she was the report
14:29:53 3 technician at central booking on the day of the
14:29:58 4 incident?

14:29:58 5 A. I don't recognize that name at all.

14:30:01 6 Q. Okay.

14:30:02 7 A. She may be. I don't know who she is.

14:30:04 8 Q. Okay. You haven't come across her at
14:30:08 9 any point during your career?

14:30:09 10 A. Again, I don't recognize the name and I
14:30:09 11 can't put a face to it. So I may have, I'm just
14:30:13 12 not certain who that is right now.

14:30:13 13 Q. Okay. Now, when would this form have
14:30:20 14 been given to you?

14:30:22 15 MS. HUGGINS: Form.

14:30:22 16 THE WITNESS: I don't get this form.

14:30:24 17 BY MR. DAVENPORT:

14:30:24 18 Q. Okay. Who does central booking give
14:30:30 19 this form to?

14:30:32 20 A. I don't work down in central booking,
14:30:36 21 I'm not certain what their policies and procedures
14:30:38 22 are.

14:30:52 23 MR. DAVENPORT: Okay. Can I mark this as

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14:30:54 1 Exhibit 27.

14:30:54 2 The following was marked for Identification:

3 EXH. 27 Buffalo Police Department
4 Prisoner Property Receipt

14:31:28 5 BY MR. DAVENPORT:

14:31:29 6 Q. So I'm going to show you what's been
14:31:32 7 marked as Exhibit 27. Do you recognize this
14:31:34 8 document?

14:31:36 9 A. Yes.

14:31:36 10 Q. Okay. What do you recognize that to
14:31:38 11 be?

14:31:38 12 A. A prisoner property receipt.

14:31:41 13 Q. Okay. Now, do you see underneath
14:31:43 14 property list where it says no property taken,
14:31:46 15 dash, appearance ticket?

14:31:47 16 A. Yes.

14:31:48 17 Q. Now, if it says, dash, appearance
14:31:53 18 ticket, does that mean he is being given an
14:31:56 19 appearance ticket?

14:31:59 20 A. I don't recall this -- this specific
14:32:01 21 sheet, so I don't know what the -- and we don't
14:32:05 22 create this, again, so I don't know what the report
14:32:08 23 technician who put this on here why they did that,

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14:32:13 1 I don't.

14:32:13 2 Q. Okay. All right. So do you see where
14:32:17 3 it says prisoner signature and then it says CL and
14:32:20 4 it's circled?

14:32:21 5 A. Uh-huh.

14:32:22 6 Q. Do you know what that's referring to?

14:32:28 7 MS. HUGGINS: You have to say yes or no.
14:32:30 8 She can't record a uh-huh.

14:32:30 9 THE WITNESS: Oh, no, I'm thinking. I'm
14:32:30 10 sorry.

14:32:35 11 MS. HUGGINS: Yeah, no, the last question.

14:32:36 12 THE WITNESS: Oh, I'm sorry, what was the
14:32:39 13 last question.

14:32:39 14 MS. HUGGINS: Just so it's clearly on the
14:32:41 15 record.

14:32:41 16 THE WITNESS: Can you repeat what the last
14:32:44 17 question was?

14:32:44 18 BY MR. DAVENPORT:

14:32:45 19 Q. Yeah, sure. So do you see prisoner
14:32:48 20 signature in the bottom left corner?

14:32:50 21 A. Yes.

14:32:50 22 Q. Okay. Do you see where it says CL with
14:32:53 23 a circle?

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14:32:53 1 A. Yes.

14:32:54 2 Q. Do you know what that's referring to?

14:32:58 3 A. As I said earlier, it could possibly
14:33:02 4 mean that he was cuffed for the signature -- or
14:33:06 5 I -- honestly, I don't know.

14:33:06 6 Q. Okay. Do you see where it says
14:33:08 7 property received time 1600?

14:33:11 8 A. Yes.

14:33:12 9 Q. Now, does that mean that he was issued
14:33:16 10 an appearance ticket at 1600?

14:33:22 11 A. Again, I didn't write this time on
14:33:25 12 here. I don't know exactly what -- it says
14:33:28 13 property received at 1600.

14:33:30 14 Q. So I understand that you've never
14:33:32 15 created one of these documents, but have you ever
14:33:35 16 seen one of them before?

14:33:36 17 A. Not the typed.

14:33:38 18 Q. Okay. How does it typically appear to
14:33:41 19 you, then?

14:33:41 20 A. Written.

14:33:43 21 Q. Okay. And who handwrites that?

14:33:43 22 A. The report technician.

14:33:45 23 Q. And have you ever been handed a

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14:33:46 1 handwritten property receipt form before?

14:33:48 2 A. We give it to the defendant.

14:33:50 3 Q. You give it to the defendant?

14:33:52 4 A. Correct, they give it to us and we give

14:33:55 5 it to the defendant and they take it back with

14:33:56 6 them. It stays with them the whole time, because

14:34:00 7 that's how they get their property back.

14:34:00 8 Q. Okay. So that would have been

14:34:01 9 something that would have been given to Mr. Kistner

14:34:01 10 with his appearance ticket?

14:34:03 11 A. Correct.

14:34:04 12 Q. Okay. Are there any --

14:34:06 13 A. If one was created for him, because,

14:34:09 14 like I said, I don't know what this is.

14:34:11 15 Q. Are there any other documents that an

14:34:14 16 individual who's receiving an appearance ticket

14:34:14 17 would receive besides a prisoner's property

14:34:19 18 receipt?

14:34:19 19 MS. HUGGINS: Form. You may answer.

14:34:20 20 THE WITNESS: Not that I could recall.

14:34:23 21 BY MR. DAVENPORT:

14:34:23 22 Q. Okay. I'm going to show you what's

14:34:38 23 been marked as Exhibit 15. Do you recognize that

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14:34:46 1 document?

14:34:46 2 A. Yes.

14:34:47 3 Q. Okay. What do you recognize that to
14:34:49 4 be?

14:34:49 5 A. The arrest form.

14:34:50 6 Q. Okay. And that was the P163 that you
14:34:54 7 referred to before?

14:34:55 8 A. Yes.

14:34:56 9 Q. Okay. Is this the handwritten form
14:35:01 10 that would be transferred into a 1375 report?

14:35:06 11 A. No.

14:35:06 12 Q. Okay. So those are different?

14:35:08 13 A. Yes.

14:35:09 14 Q. Is the P163 changed into an electronic
14:35:15 15 form?

14:35:17 16 A. I'm not certain.

14:35:19 17 Q. Okay. Who would fill out the
14:35:23 18 handwritten P163 form?

14:35:26 19 A. The arresting officer.

14:35:27 20 Q. Okay. So that would have been
14:35:30 21 Ms. McDermott?

14:35:30 22 A. Correct.

14:35:30 23 Q. Okay. Now, where it says the

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14:35:36 1 processing report technician, would that be the
14:35:40 2 person at central booking?

14:35:44 3 A. Yes.

14:35:45 4 Q. Okay. Do you know whose signature that
14:35:50 5 is?

14:35:50 6 A. I do not.

14:35:51 7 Q. Okay. Now, would this be a form that
14:35:58 8 either you or Ms. McDermott would have filled out
14:36:01 9 at central booking?

14:36:03 10 A. It could have been filled out at
14:36:05 11 central booking.

14:36:06 12 Q. Okay. Would it be handed to the report
14:36:09 13 technician at central booking?

14:36:11 14 A. Yes.

14:36:12 15 Q. Okay. Would this form ever be handed
14:36:14 16 to Mr. Kistner?

14:36:16 17 A. No.

14:36:16 18 Q. Okay. So he would never have a chance
14:36:20 19 to see this document on the day of his arrest?

14:36:22 20 A. No.

14:36:32 21 Q. Now, where it says the complainant's
14:36:35 22 name is SONY, what does that refer to?

14:36:40 23 A. State of New -- State of New York.

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14:36:41 1 Q. Okay. Why wouldn't Ms. McDermott's
14:36:45 2 name be listed as the complainant?

14:36:48 3 A. It's just a procedural thing we do. We
14:36:51 4 work on -- our charges are filed on behalf of the
14:36:54 5 State of New York.

14:36:54 6 Q. Okay. Where it says use of force,
14:37:01 7 that's checked no, correct?

14:37:02 8 A. Yes.

14:37:04 9 Q. So would striking an individual with a
14:37:10 10 car be considered a use of force?

14:37:13 11 MS. HUGGINS: Form. You can answer.

14:37:14 12 THE WITNESS: That would depend on the
14:37:18 13 circumstance in which a vehicle struck an
14:37:18 14 individual.

14:37:21 15 BY MR. DAVENPORT:

14:37:21 16 Q. Is it possible?

14:37:23 17 A. Pardon?

14:37:23 18 Q. Is it possible that a use of force
14:37:27 19 could include striking an individual with a police
14:37:29 20 car?

14:37:29 21 MS. HUGGINS: Form. You can answer.

14:37:30 22 THE WITNESS: If a person was intentionally
14:37:31 23 struck with a police vehicle, yes.

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14:37:33 1 BY MR. DAVENPORT:

14:37:33 2 Q. What if that individual was negligently
14:37:38 3 struck by a police vehicle?

14:37:39 4 MS. HUGGINS: Form.

14:37:39 5 THE WITNESS: Then that wouldn't be
14:37:41 6 considered -- I don't believe that would be
14:37:42 7 considered a use of force.

14:37:44 8 MR. DAVENPORT: Okay. I'm going to show you
14:38:16 9 what's been marked as Exhibit 13. And then I would
14:38:24 10 like to mark this as Exhibit 28.

14:38:24 11 The following was marked for Identification:

12 EXH. 28 Department of Law Letter
13 dated 12/17/19

14:39:10 14 BY MR. DAVENPORT:

14:39:10 15 Q. I'm going to also show you what's been
14:39:14 16 marked as Exhibit 28. Now, on Exhibit 13 would you
14:39:18 17 please turn to page 13?

14:39:20 18 Now, question 19 asks identify the badge or
14:39:37 19 identification number, rank, or title, and height
14:39:41 20 and weight of all defendants shown in the video
14:39:44 21 attached as Exhibit A to the complaint as of
14:39:48 22 January 1st, 2017.

14:39:51 23 Now, I would also like you to turn to

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14:39:56 1 page 16 on Exhibit 13. What is the date that's
14:40:07 2 listed on page 16?

14:40:09 3 A. December 12th, 2018.

14:40:12 4 Q. Okay. I want to now direct your
14:40:15 5 attention to Exhibit 28. Now, in response to the
14:40:21 6 question that was posed on page 13 of Exhibit 13
14:40:26 7 it's the same question, identify the badge or
14:40:29 8 identification number, rank, or title, and height
14:40:33 9 and weight of all defendants shown in the video
14:40:36 10 attached as Exhibit A to the complaint as of
14:40:39 11 January 1st of 2017.

14:40:40 12 Now, the second to last sentence says that
14:40:44 13 Jenny Velez was promoted to lieutenant on July 2nd
14:40:49 14 of 2018. Now, I want you to again look at
14:40:53 15 response 19 on Exhibit 13 and tell me do you see
14:40:57 16 that information anywhere in response to
14:41:01 17 interrogatory 19?

14:41:02 18 MS. HUGGINS: Form.

14:41:07 19 BY MR. DAVENPORT:

14:41:08 20 Q. Exhibit 13, page 19, do you see Jenny
14:41:12 21 Velez?

14:41:13 22 A. Page 13, 19. Okay. Slow it down for
14:41:14 23 me, because this is a lot of words everywhere.

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14:41:17 1 So page 13, 19, I see this. Now, what are
14:41:23 2 you asking me in regards to the other page?

14:41:25 3 Q. Okay. I want you to look on Exhibit 28
14:41:30 4 and tell me do you see the line that says Jenny
14:41:32 5 Velez was promoted to lieutenant on July 2nd of
14:41:36 6 2018?

14:41:36 7 A. Yes.

14:41:36 8 Q. Do you see that?

14:41:37 9 A. Yes.

14:41:37 10 Q. Okay. Now, I want you to look at
14:41:41 11 Exhibit 13, response number 19.

14:41:43 12 A. Uh-huh, yes.

14:41:44 13 Q. And I want you to tell me do you see
14:41:47 14 that information as it's written on Exhibit 28
14:41:49 15 anywhere on Exhibit 13?

14:41:52 16 MS. HUGGINS: Form.

14:41:55 17 THE WITNESS: The line that says Jenny Velez
14:41:57 18 was promoted to lieutenant on July 2nd, 2018 is not
14:42:01 19 on page 13.

14:42:02 20 BY MR. DAVENPORT:

14:42:03 21 Q. Thank you. Now, turning back towards
14:42:06 22 Exhibit 28, what is the date of this letter?

14:42:12 23 A. December 17th, 2019.

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14:42:15 1 Q. And as you stated before, the date on
14:42:19 2 Exhibit 13 is December 12th of 2018.

14:42:26 3 A. Yes.

14:42:26 4 Q. So this correction would have been made
14:42:30 5 more than a year after Exhibit 13 had been put
14:42:33 6 together, correct?

14:42:35 7 MS. HUGGINS: Form.

14:42:38 8 THE WITNESS: This is dated December 12th,
14:42:41 9 2018. And this one is dated December 17th, 2019.

14:42:45 10 BY MR. DAVENPORT:

14:42:45 11 Q. So you agree that would have been more
14:42:45 12 than a year?

14:42:45 13 MS. HUGGINS: Form.

14:42:47 14 THE WITNESS: The difference between the two
14:42:48 15 dates is more than a year.

14:42:51 16 BY MR. DAVENPORT:

14:42:51 17 Q. Okay. So I guess my question is, if
14:42:54 18 you were promoted on July 2nd of 2018, which is
14:42:57 19 before the date of Exhibit 13, which is
14:43:00 20 December 12th of 2018, why did you not include that
14:43:04 21 information for the question that was posed to you
14:43:09 22 in this interrogatory on Exhibit 13?

14:43:12 23 MS. HUGGINS: Form.

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14:43:13 1 THE WITNESS: I don't understand the
14:43:14 2 question.

14:43:14 3 BY MR. DAVENPORT:

14:43:15 4 Q. You were promoted on July 2nd of 2018,
14:43:18 5 correct?

14:43:18 6 A. Yes.

14:43:18 7 Q. Okay. And the date of Exhibit 13 is
14:43:22 8 December 12th of 2018?

14:43:25 9 A. Yes.

14:43:25 10 Q. And December 12th, 2018 would have been
14:43:28 11 after you were promoted on July 2nd of 2018?

14:43:31 12 MS. HUGGINS: Form.

14:43:32 13 THE WITNESS: I was promoted after. Yeah, I
14:43:37 14 was -- this was done after I was promoted.

14:43:39 15 BY MR. DAVENPORT:

14:43:39 16 Q. Okay.

14:43:40 17 A. It's dated after I was promoted anyway.

14:43:42 18 Q. So why on the document that was created
14:43:45 19 or dated on December 12th of 2018 was the
14:43:48 20 information that's on Exhibit 28 not included in
14:43:52 21 the response on Exhibit 13?

14:43:55 22 MS. HUGGINS: Form.

14:43:56 23 THE WITNESS: It -- it seems to be an error,

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14:43:58 1 because on January 1, 2017 I was a patrol officer,
14:44:01 2 not a lieutenant. So it appears that this is just
14:44:07 3 articulating that at the time of the incident I was
14:44:07 4 a patrol officer, not a lieutenant.

14:44:08 5 So this was entered in error, so it's just
14:44:11 6 correcting the fact that I was promoted to
14:44:14 7 lieutenant after the date of the incident after 1/1
14:44:17 8 of 7 -- 2017.

14:44:17 9 BY MR. DAVENPORT:

14:44:17 10 Q. Did you review the responses on
14:44:20 11 Exhibit 13 before they were signed by your
14:44:22 12 attorney?

14:44:23 13 A. I believe I did read this.

14:44:26 14 Q. Did you review it before December 12th
14:44:29 15 of 2018?

14:44:29 16 MS. HUGGINS: Form.

14:44:31 17 THE WITNESS: I don't recall the exact date.
14:44:34 18 There's a lot of writing, it may have been an
14:44:37 19 oversight. I'm not certain.

14:44:38 20 BY MR. DAVENPORT:

14:44:39 21 Q. Okay. At any point were you asked for
14:44:43 22 a verification for any sort of documents, were you
14:44:50 23 ever asked for a verification?

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14:44:52 1 MS. HUGGINS: Form.

14:44:52 2 THE WITNESS: That's vague. What kind of
14:44:55 3 document?

14:44:55 4 BY MR. DAVENPORT:

14:44:56 5 Q. Here, I'll show you.

14:45:08 6 MS. HUGGINS: She has it in front of her
14:45:12 7 right now.

14:45:13 8 MR. DAVENPORT: No, she doesn't have her
14:45:16 9 verification.

14:45:16 10 MS. HUGGINS: Oh, I'm sorry, I thought you
14:45:19 11 were referring to the interrogator.

14:45:21 12 MR. DAVENPORT: Can I have this marked as
14:45:23 13 Exhibit 29.

14:45:23 14 The following was marked for Identification:

15 EXH. 29 Verification Document

14:45:30 16 MR. DAVENPORT: And, also, it's 2:45, I
14:45:32 17 don't know if you guys want to take a break or not.

14:45:34 18 MS. HUGGINS: Let's do that.

14:45:34 19 (Discussion off the record at
14:45:34 20 1445.)

15:07:47 21 (On the record at 1507.)

15:07:47 22 BY MR. DAVENPORT:

15:07:49 23 Q. So, Ms. Velez, we were reviewing

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15:07:53 1 Exhibit 28 and Exhibit 13. I will now show you
15:07:59 2 what has been marked as Exhibit 29. Do you
15:08:06 3 recognize that document?

15:08:07 4 A. Yes.

15:08:08 5 Q. And what do you recognize it to be?

15:08:10 6 A. I believe it's the back page to this
15:08:14 7 when I signed that I reviewed this.

15:08:15 8 Q. Okay. Do you know approximately when
15:08:17 9 you signed this document?

15:08:18 10 MS. HUGGINS: Form.

15:08:19 11 THE WITNESS: No.

15:08:20 12 BY MR. DAVENPORT:

15:08:20 13 Q. Okay. Would it have been
15:08:23 14 in -- recently?

15:08:25 15 A. I don't recall.

15:08:27 16 Q. Would it have been within the last
15:08:29 17 year?

15:08:29 18 A. Yes.

15:08:30 19 Q. Okay.

15:08:31 20 A. I believe so. I -- I recall going
15:08:36 21 through this page by page. I recall doing this, I
15:08:40 22 just don't recall when.

15:08:41 23 Q. Okay. Did you sign this document at

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15:08:45 1 the same day that you went through this Exhibit 13
15:08:47 2 page by page?

15:08:48 3 MS. HUGGINS: Form. Well, I'm going to
15:08:52 4 object, because I think that you're very close if
15:08:56 5 not over the line of attorney/client.

15:08:58 6 Without revealing discussions that you and I
15:09:01 7 may have had, have you met with me to discuss the
15:09:03 8 incident that is the subject of this lawsuit?

15:09:06 9 MR. DAVENPORT: Well, no, that wasn't my
15:09:08 10 question.

15:09:08 11 MS. HUGGINS: No.

15:09:08 12 MR. DAVENPORT: You're mischaracterizing my
15:09:11 13 question entirely. I just asked her did you sign
15:09:14 14 this document on the same day that you went through
15:09:17 15 Exhibit 13.

15:09:18 16 MS. HUGGINS: Form. I -- I believe that you
15:09:22 17 may have even crossed the line into attorney/client
15:09:26 18 privilege. If not, you are up -- up against that
15:09:27 19 line right now.

15:09:28 20 MR. DAVENPORT: Okay.

15:09:29 21 MS. HUGGINS: What -- what was I going to
15:09:33 22 inquire of my client without revealing or waiving
15:09:39 23 that privilege is if legal documents were prepared,

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15:09:44 1 if she's had conversations with me, and if she has
15:09:48 2 reviewed those documents and signed off on them.

15:09:52 3 I believe that's what you're trying to do,
15:09:54 4 but at -- at this point you have gotten to a point
15:09:54 5 where you're asking about when certain things were
15:09:58 6 done, who clearly she has not signed her name to,
15:10:01 7 which would be Exhibit 28, and that is a document
15:10:03 8 that I signed my name to -- to as an attorney in
15:10:05 9 this matter.

15:10:06 10 And I think that you veered towards
15:10:09 11 attorney/client privilege in a way that is not
15:10:12 12 necessary and not discoverable in this matter.

15:10:16 13 MR. DAVENPORT: Are you going to direct her
15:10:18 14 to not answer the question?

15:10:20 15 MS. HUGGINS: I think what you're trying to
15:10:21 16 ask is did you look at -- did you read a document
15:10:23 17 before you signed a verification page.

15:10:25 18 That is fine. I'm perfectly okay with that,
15:10:28 19 but I'm not okay with you continuing to ask
15:10:32 20 questions about meeting about the content of
15:10:35 21 documents when an attorney is involved and present
15:10:35 22 for it.

15:10:39 23 MR. DAVENPORT: Didn't ask about that. I

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15:10:40 1 asked did she --

15:10:40 2 MS. HUGGINS: I respectfully disagree and I

15:10:43 3 think the record will reflect what you've asked.

15:10:45 4 And -- and so at this point I'm -- I'll -- I'm

15:10:50 5 willing to allow her to ask questions about the

15:10:50 6 verification page and what she reviewed before she

15:10:56 7 signed that, but I'm not willing to allow her to

15:10:58 8 ask questions -- or answer questions with regard to

15:11:02 9 documents that were prepared in conjunction with

15:11:05 10 her attorney during the course of representation in

15:11:09 11 this case.

15:11:09 12 BY MR. DAVENPORT:

15:11:09 13 Q. Would you agree that what is written in

15:11:12 14 the interrogatories were -- was provided to us?

15:11:14 15 MS. HUGGINS: Okay. This is not my

15:11:18 16 deposition.

15:11:19 17 MR. DAVENPORT: That's correct, but you are

15:11:20 18 intruding on my deposition right now.

15:11:20 19 MS. HUGGINS: No, I am making a record,

15:11:25 20 because I believe that you have now veered into

15:11:28 21 privileged matter.

15:11:29 22 I'm permitted to do so in a deposition.

15:11:32 23 MR. DAVENPORT: You are absolutely

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15:11:33 1 privileged to do so. You are also privileged to
15:11:37 2 tell your client to not answer the questions that
15:11:38 3 I've asked, which it seems that you are veering
15:11:41 4 towards doing.

15:11:41 5 Just know that if you obstruct my
15:11:45 6 deposition, you, your clients, the City of Buffalo,
15:11:49 7 will be responsible for bringing this individual
15:11:51 8 back to testify.

15:11:53 9 So, Ms. Velez, I would assume that you do
15:11:57 10 not want to come back --

15:11:57 11 MS. HUGGINS: No.

15:11:59 12 MR. DAVENPORT: -- for a deposition to do
15:12:00 13 so.

15:12:00 14 MS. HUGGINS: No, no, no, no, we're
15:12:02 15 not -- we're not going to continue this way. Okay?

15:12:04 16 MR. DAVENPORT: Okay.

15:12:04 17 MS. HUGGINS: She is -- she is going to
15:12:06 18 answer questions that are proper deposition
15:12:10 19 questions, but if a question asks about
15:12:14 20 attorney/client privilege, I'm going to invoke that
15:12:17 21 and she is not going to answer those questions.

15:12:21 22 Now, I -- I have no problem with you asking
15:12:24 23 her if she reviewed documentation before she signed

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15:12:28 1 a verification page, but you're not going to go
15:12:32 2 into what was -- when and where and who and what
15:12:35 3 was discussed during meetings with her attorney.
15:12:36 4 She -- you're not going to do that and I'm going to
15:12:36 5 invoke privilege for that -- those questions.

15:12:36 6 BY MR. DAVENPORT:

15:12:39 7 Q. Okay. I haven't asked her a single
15:12:40 8 question about what was said to you during her
15:12:42 9 meeting, so I'm going to continue asking you,
15:12:46 10 Ms. Velez, when approximately did you sign this
15:12:49 11 verification page?

15:12:49 12 A. I don't recall the exact date.

15:12:50 13 Q. Okay. Would it have been roughly
15:12:55 14 around December of 2019?

15:12:57 15 A. I don't recall.

15:12:58 16 Q. Okay. When you signed this
15:13:03 17 verification page, did you review the responses in
15:13:07 18 Exhibit 13?

15:13:08 19 A. I did read this packet.

15:13:11 20 Q. Okay. So when you reviewed the
15:13:18 21 responses in Exhibit 13, did you notice any
15:13:22 22 responses that you wished to amend or change?

15:13:25 23 A. I was not -- at this time the one that

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15:13:29 1 was brought to my attention is the one where it
15:13:31 2 says that I held the rank of lieutenant on
15:13:34 3 January 1, 2017, because I did not.

15:13:36 4 Q. Okay. So prior to December of 2018,
15:13:46 5 did you review the response to Exhibit 19 -- or
15:13:50 6 question 19?

15:13:51 7 A. I don't recall the exact date.

15:13:53 8 Q. Was it more than a year ago that you
15:13:59 9 would have reviewed this document and reviewed the
15:14:03 10 response to question 19?

15:14:06 11 A. Again, I don't remember the exact date.
15:14:11 12 I don't believe it was more than a year, but I
15:14:14 13 don't recall the exact date. If it's the date
15:14:18 14 dated, I don't recall.

15:14:18 15 Q. Okay. Did you review these responses
15:14:25 16 before you signed your verification?

15:14:28 17 A. I believe so.

15:14:29 18 Q. Okay. Did you review them more than
15:14:33 19 one time before you signed this verification?

15:14:36 20 A. I don't recall.

15:14:37 21 Q. Okay. When you reviewed your response
15:14:43 22 to number 19, did you contact your attorney to tell
15:14:48 23 her that you did not agree with the response to

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15:14:53 1 number 19?

15:14:54 2 MS. HUGGINS: Form. And, again, you just
15:14:54 3 asked what she told her attorney, it's
15:14:54 4 attorney/client.

15:14:56 5 MR. DAVENPORT: I asked did she contact her,
15:14:58 6 did she contact you.

15:14:58 7 MS. HUGGINS: Form.

15:15:00 8 MR. DAVENPORT: I just want to know how that
15:15:03 9 amendment was made?

15:15:04 10 MS. HUGGINS: No, you are --

15:15:05 11 MR. DAVENPORT: You're misconstruing my
15:15:08 12 questions and you're obstructing --

15:15:08 13 MS. HUGGINS: No.

15:15:08 14 MR. DAVENPORT: -- right now in my
15:15:08 15 deposition.

15:15:09 16 MS. HUGGINS: No, I know exactly what has
15:15:11 17 gone on between my client and me and that -- and I
15:15:15 18 am invoking attorney/client privilege.

15:15:16 19 MR. DAVENPORT: Are you directing her to not
15:15:16 20 answer my question?

15:15:16 21 MS. HUGGINS: This is the problem here.

15:15:16 22 MR. DAVENPORT: What's that?

15:15:20 23 MS. HUGGINS: And this is why I made that

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15:15:20 1 objection earlier. You're asking questions about
15:15:23 2 when legal documents were prepared with an attorney
15:15:27 3 that -- that undoubtedly invokes and involves
15:15:32 4 privilege.

15:15:33 5 I will never, ever ask your client about any
15:15:38 6 document that you -- that he has he ever worked or
15:15:40 7 collaborated on with you in the course of the
15:15:43 8 representation of this case.

15:15:45 9 BY MR. DAVENPORT:

15:15:45 10 Q. Okay. I am not asking any questions
15:15:46 11 about what was said between you and her. I just
15:15:49 12 asked after you saw that discrepancy on response to
15:15:52 13 question 19, did you contact your attorney to let
15:15:58 14 her know that you did not agree to the response on
15:16:02 15 number 19?

15:16:03 16 MS. HUGGINS: Form. And same objection.

15:16:04 17 MR. DAVENPORT: Are you going direct her to
15:16:07 18 not answer?

15:16:08 19 MS. HUGGINS: Was there -- was there a
15:16:08 20 correction or supplement made to that -- to the
15:16:11 21 response to question 19?

15:16:11 22 MR. DAVENPORT: This is my deposition. You
15:16:13 23 don't get to ask her the questions yet.

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15:16:16 1 MS. HUGGINS: She's going to -- she's going
15:16:18 2 to waive privilege if she answers that question the
15:16:18 3 way you've worded it.

15:16:18 4 BY MR. DAVENPORT:

15:16:22 5 Q. No, not -- I'm just simply asking when
15:16:23 6 you reviewed and saw that discrepancy -- here's a
15:16:26 7 question.

15:16:26 8 When you reviewed these interrogatories,
15:16:29 9 were you in the presence of your attorney?

15:16:31 10 A. Yes.

15:16:31 11 Q. Okay. Did you ever review these
15:16:34 12 interrogatories not in the presence of your
15:16:37 13 attorney?

15:16:37 14 A. Not that I could recall.

15:16:38 15 Q. Okay. So when you signed your
15:16:44 16 verification, did you sign your verification at the
15:16:48 17 same time that you were with your attorney?

15:16:50 18 A. Yes.

15:16:51 19 Q. Okay. Did you -- here's a question.
15:17:09 20 How do you receive notifications to meet
15:17:12 21 with your attorney?

15:17:13 22 A. It could either be through -- through
15:17:16 23 the department or in conversation.

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15:17:19 1 Q. Okay. Do you typically receive some
15:17:25 2 sort of notification?

15:17:26 3 A. Yes.

15:17:27 4 Q. Okay. How many times have you received
15:17:28 5 that notification?

15:17:29 6 MS. HUGGINS: Form.

15:17:30 7 THE WITNESS: I don't recall.

15:17:31 8 BY MR. DAVENPORT:

15:17:32 9 Q. Okay. Was it more than five?

15:17:35 10 MS. HUGGINS: Form.

15:17:36 11 THE WITNESS: Possibly, I'm not certain the
15:17:38 12 exact number.

15:17:38 13 BY MR. DAVENPORT:

15:17:39 14 Q. Okay. Did you receive a notification
15:17:46 15 for your deposition today?

15:17:49 16 A. I received a notification from my
15:17:52 17 attorney.

15:17:52 18 Q. Okay. Did you receive a notification
15:17:55 19 for your deposition that was scheduled for last
15:17:58 20 Wednesday?

15:17:59 21 A. From my attorney, yes.

15:18:00 22 Q. Okay. Aside from those two instances,
15:18:05 23 have you received notifications from your

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15:18:08 1 attorney --

15:18:11 2 MS. HUGGINS: Form.

15:18:11 3 BY MR. DAVENPORT:

15:18:12 4 Q. -- more or less than five times?

15:18:14 5 MS. HUGGINS: Form. What is the relevance
15:18:16 6 of how frequently you've met with an attorney on a
15:18:17 7 case?

15:18:17 8 MR. DAVENPORT: I'm trying to figure out
15:18:17 9 discovery compliance, Ms. Huggins, and it might be
15:18:19 10 subject to a motion later.

15:18:20 11 I'm just trying to make a record for
15:18:24 12 potential motion practice. You're now obstructing
15:18:27 13 my deposition and I would like the record to be
15:18:29 14 clear on exactly what compliance was with discovery
15:18:33 15 in this matter.

15:18:34 16 MS. HUGGINS: I'm instructing my client that
15:18:37 17 she is not to reveal the substance of any
15:18:37 18 conversations we've had with any --

15:18:37 19 BY MR. DAVENPORT:

15:18:41 20 Q. I haven't asked for the substance one
15:18:41 21 time.

15:18:42 22 How many times have you been contacted by
15:18:44 23 your attorney besides your deposition for last week

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15:18:47 1 and today?

15:18:49 2 MS. HUGGINS: Form.

15:18:51 3 BY MR. DAVENPORT:

15:18:52 4 Q. How many times have you received
15:18:53 5 notifications involving this proceeding to meet
15:18:56 6 with your attorney outside of last Wednesday and
15:18:58 7 today?

15:19:00 8 A. I don't recall.

15:19:01 9 Q. Was it more or less than five times?

15:19:04 10 A. I don't recall.

15:19:06 11 Q. Okay. When you meet, do you meet with
15:19:13 12 other defendants, or is it just you?

15:19:15 13 MS. HUGGINS: Form. And, again, now
15:19:16 14 that -- that does veer into attorney/client.

15:19:21 15 MR. DAVENPORT: Are you going to direct her
15:19:23 16 to not answer?

15:19:24 17 MS. HUGGINS: You can't ask her about what
15:19:27 18 happens during meetings with -- with her attorney.

15:19:29 19 MR. DAVENPORT: I didn't ask her about what
15:19:31 20 happened during the meeting, I just asked who was
15:19:33 21 present.

15:19:35 22 MS. HUGGINS: I don't think that that is a
15:19:36 23 proper question.

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15:19:38 1 MR. DAVENPORT: I'm just asking are you
15:19:41 2 going to direct her to not answer, because I'm
15:19:44 3 going to ask her the question.

15:19:52 4 MS. HUGGINS: Do you have authority that
15:19:55 5 supports that as a proper deposition question?

15:19:57 6 MR. DAVENPORT: I don't on me right now, but
15:19:59 7 I'm going to ask her, unless you direct her to not
15:20:03 8 answer.

15:20:11 9 MS. HUGGINS: I'm objecting to the form of
15:20:14 10 the question. I've obviously alerted to you that
15:20:18 11 my concerns are that this is breaching
15:20:21 12 attorney/client privilege.

15:20:22 13 Who -- who is present during -- during
15:20:24 14 meetings with attorneys I -- I do not think is
15:20:28 15 discoverable.

15:20:31 16 And, again, I'm reminding my client not
15:20:35 17 to -- to disclose any of the discussions we've had
15:20:35 18 during the course of any of those meetings.

15:20:39 19 You can answer to the best of your ability.

15:20:41 20 MR. DAVENPORT: Of course.

15:20:41 21 Can you please read back my last question.

15:20:44 22 (The above-requested question was then read
15:21:09 23 by the reporter.)

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15:21:09 1 BY MR. DAVENPORT:

15:21:10 2 Q. With your attorney. Are the other
15:21:13 3 defendants present when you went to go meet with
15:21:16 4 your attorney?

15:21:16 5 MS. HUGGINS: Form. You can answer.

15:21:18 6 THE WITNESS: I recall one time, at least
15:21:20 7 one time Officer McDermott was there, but she's the
15:21:23 8 only one that I recall ever being there.

15:21:25 9 BY MR. DAVENPORT:

15:21:26 10 Q. Thank you.

15:21:26 11 A. You're welcome.

15:21:28 12 Q. All right. I'm going to move on to the
15:21:31 13 video portion. Do you mind, can we get the lights
15:21:35 14 on it? Thank you.

15:21:47 15 So I'm going to show you what has been
15:21:50 16 marked as Exhibit 11 in this deposition. The last
15:21:54 17 four numbers are 5252.

15:21:54 18 (Playing video.)

15:22:20 19 Now, Ms. Velez, do you recognize the vehicle
15:22:23 20 that is depicted in this video?

15:22:25 21 A. Yes.

15:22:25 22 Q. Have you seen that vehicle before?

15:22:27 23 A. Yes.

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15:22:28 1 Q. And when did you see it?

15:22:29 2 A. 1/1 of 2017.

15:22:30 3 Q. Had you ever seen that vehicle before?

15:22:32 4 A. Not that I could recall.

15:22:34 5 Q. When you arrived at the scene, did

15:22:37 6 Ms. McDermott say that she had seen that vehicle

15:22:40 7 before?

15:22:40 8 A. Not that I could recall.

15:22:46 9 Q. Do you know who this individual is?

15:22:48 10 A. I do not.

15:23:38 11 Q. I am now showing you last four digits

15:23:45 12 1342 what has been marked as Exhibit 11 in this

15:23:49 13 deposition. What are the three numbers located on

15:23:51 14 the top of that police vehicle?

15:23:53 15 A. 532.

15:23:56 16 Q. Okay. Do you know who was driving that

15:23:59 17 car on January 1st of 2017?

15:24:04 18 A. I don't recall who was driving it.

15:24:06 19 Q. Do you recall who was in that vehicle

15:24:08 20 that day?

15:24:09 21 A. Yes, Officer Kyle Moriarity and Carl

15:24:13 22 Schulz.

15:24:14 23 Q. Do you remember what either of them

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15:24:17 1 were wearing that day, aside from their police
15:24:21 2 uniform?

15:24:22 3 A. I believe Kyle had a hat on.

15:24:31 4 Q. Now, the police officer that is walking
15:24:33 5 over to this individual on the sidewalk, is he
15:24:36 6 wearing a hat?

15:24:37 7 A. It appears to be so.

15:24:40 8 Q. Would you believe that that's Kyle
15:24:42 9 Moriarity?

15:24:42 10 A. Yes.

15:24:46 11 Q. Now, assuming that -- well, let's turn
15:24:50 12 to the complaint summary report that I provided
15:24:54 13 you, it should be Exhibit 3. It might be closer to
15:25:13 14 the bottom.

15:25:16 15 A. Okay.

15:25:17 16 Q. So what was the call that Officer
15:25:21 17 Schulz and Officer Moriarity were responding to?

15:25:25 18 A. Larceny/theft.

15:25:28 19 Q. Okay. So based on the knowledge that
15:25:32 20 the call they were responding to was a larceny or
15:25:35 21 theft, what do you think Officer Moriarity is doing
15:25:39 22 right here?

15:25:39 23 A. I can't speculate as to what he's

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15:25:42 1 doing.

15:25:42 2 Q. In your role as a police officer what
15:25:44 3 would you do speaking to a complainant who is
15:25:49 4 complaining of a larceny or a theft?

15:25:50 5 MS. HUGGINS: Form.

15:25:51 6 THE WITNESS: It depends on the type of
15:25:53 7 call, what he's complaining of a theft of, if -- if
15:25:55 8 we have time for questions, if it's something we
15:25:55 9 need to act on immediately, then we would proceed a
15:25:58 10 little quicker, but initially you're fact finding,
15:26:02 11 who, what, when, how, what's missing, what's going
15:26:06 12 on.

15:26:06 13 BY MR. DAVENPORT:

15:26:06 14 Q. Okay. Now, during your investigation
15:26:08 15 would you ask for any sort of identification of
15:26:11 16 this individual?

15:26:12 17 MS. HUGGINS: Form.

15:26:12 18 A. Depending on if I'm familiar --

15:26:14 19 MR. DAVENPORT: I would ask what's the form
15:26:16 20 objection?

15:26:16 21 MS. HUGGINS: You're asking a hypothetical
15:26:18 22 question of this individual who appears to be on a
15:26:21 23 video where this lieutenant is not pictured on that

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15:26:25 1 video. She's already indicated in previous
15:26:28 2 testimony that they weren't there at this point.
15:26:31 3 It's a hypothetical question, it calls for
15:26:35 4 speculation.

15:26:35 5 MR. DAVENPORT: I would just ask what's
15:26:36 6 wrong with a hypothetical or a speculative answer
15:26:38 7 in a deposition?

15:26:39 8 MS. HUGGINS: That is not a proper question.
15:26:43 9 I am -- I am preserving a form objection. If you
15:26:46 10 would like to reword your question so it's not
15:26:49 11 speculative and it's possibly admissible later and
15:26:50 12 you may be able to use it later, you may.

15:26:55 13 But I am -- I am preserving a form
15:26:57 14 objection. I -- she is answering your question,
15:27:00 15 your deposition is proceeding.

15:27:00 16 BY MR. DAVENPORT:

15:27:01 17 Q. Sure. So would it also be true that
15:27:04 18 somebody can ask that -- a question during a
15:27:07 19 deposition that wouldn't be --

15:27:07 20 MS. HUGGINS: Sir, I'm not going to debate
15:27:09 21 how to -- how to --

15:27:09 22 MR. DAVENPORT: It's your form objection, so
15:27:11 23 I would like to know and I would like to try to fix

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15:27:14 1 it if, you know, we can sort that out.

15:27:16 2 **MS. HUGGINS:** For the benefit of the
15:27:17 3 reporter I would appreciate it if you don't speak
15:27:17 4 over me.

15:27:21 5 You asked me what the basis of my form
15:27:22 6 objection was and I told you. If you want to
15:27:25 7 reword the question, you may. If you don't, she's
15:27:27 8 going to be permitted to answer the question.

15:27:30 9 I did not tell her that she could not answer
15:27:32 10 the question.

15:27:32 11 **BY MR. DAVENPORT:**

15:27:32 12 **Q.** Okay. So, Ms. Velez, would -- as part
15:27:36 13 of investigating a theft or burglary, would you ask
15:27:41 14 the complainant for some sort of identification?

15:27:45 15 **A.** It depends on if I'm familiar with that
15:27:47 16 person. I may already know it or I could ask for
15:27:48 17 identification, depending on what part of the
15:27:52 18 investigation we're in.

15:27:52 19 It's not typical that as soon as you walk up
15:27:55 20 to someone you say can I have your license or can I
15:27:57 21 have a ident -- a form of identification.

15:27:59 22 Sometimes you just -- you have to ease into
15:28:01 23 an investigation. They're some -- they're usually

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15:28:04 1 upset, they have a complaint.

15:28:06 2 So at some point, yes, if I'm not familiar
15:28:10 3 with the person, I will ask for identification, but
15:28:11 4 it doesn't necessarily -- it doesn't necessarily
15:28:12 5 have to be instantaneous as soon as I arrive.

15:28:16 6 Q. But you would expect at some point some
15:28:17 7 officer would ask for identification?

15:28:19 8 A. Again, if I wasn't familiar or if the
15:28:21 9 officer wasn't familiar with the person who makes
15:28:23 10 the complaint, yes.

15:28:25 11 Q. Okay. Now, as part of your
15:28:30 12 investigation, would you also run the license plate
15:28:33 13 on that vehicle?

15:28:34 14 A. If I didn't have a -- if the license
15:28:36 15 plate wasn't part of my investigation, not
15:28:39 16 necessarily.

15:28:40 17 Q. Okay. When would the license plate be
15:28:43 18 part of the investigation?

15:28:44 19 A. If based on the investigation it's
15:28:46 20 deemed to be part of the investigation.

15:28:48 21 Q. Okay. At any point was there any
15:28:52 22 discussion about what's this burglary or theft call
15:28:56 23 related to?

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15:28:56 1 A. Pardon?

15:28:57 2 Q. At any point was there any discussion
15:28:59 3 between you and the other officers about what this
15:29:02 4 burglary or theft call what this person's complaint
15:29:06 5 was?

15:29:06 6 A. I don't recall having a conversation
15:29:08 7 with the officers about it.

15:29:09 8 Q. Okay. Did you ever have a conversation
15:29:11 9 with the complainant?

15:29:12 10 A. No.

15:29:12 11 Q. Okay. Did Officer McDermott ever have
15:29:14 12 a conversation with the complainant?

15:29:17 13 A. I don't recall.

15:29:17 14 Q. Now, is that your police vehicle that
15:29:21 15 Ms. McDermott was driving that just arrived on the
15:29:24 16 scene?

15:29:24 17 A. Yes.

15:29:25 18 Q. Okay. And that was because
15:29:27 19 Ms. McDermott was familiar with this 33 Schmarbeck
15:29:30 20 location?

15:29:31 21 A. Yes.

15:29:37 22 Q. So, now, I see that you're a little bit
15:29:41 23 behind Officer Schulz's and Officer Moriarity's

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15:29:45 1 police vehicle. Is there any specific reason why

15:29:48 2 Ms. McDermott parked her vehicle behind Officer

15:29:51 3 Moriarity and Officer Schulz's police vehicle?

15:29:55 4 **A.** You would --

15:29:55 5 **MS. HUGGINS:** Form.

15:29:56 6 **THE WITNESS:** You would have to ask Officer

15:29:59 7 McDermott that. I'm not certain.

15:30:00 8 **BY MR. DAVENPORT:**

15:30:00 9 **Q.** Okay. Would there be any reason why
15:30:02 10 you as a police officer would park behind Officer

15:30:06 11 Schulz and Officer Moriarity's police vehicle?

15:30:08 12 **A.** It depends on the situation, the type
15:30:10 13 of call. It possibly could be tactical. It
15:30:14 14 depends on what we're responding to.

15:30:16 15 **Q.** Okay. Based on what you have seen in
15:30:16 16 this -- in this video, would there be any reason
15:30:19 17 why you would park your police vehicle behind
15:30:21 18 Officer Moriarity and Officer Schulz's police
15:30:23 19 vehicle?

15:30:24 20 **A.** No particular reason.

15:30:30 21 **Q.** Officer Moriarity, was he in training
15:30:33 22 at this time?

15:30:33 23 **A.** Yes.

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15:30:34 1 Q. Field training?

15:30:36 2 A. Yes.

15:30:36 3 Q. Okay. What do you think that he is
15:30:40 4 discussing with Officer Schulz?

15:30:43 5 MS. HUGGINS: Form.

15:30:43 6 THE WITNESS: I don't know.

15:30:45 7 BY MR. DAVENPORT:

15:30:45 8 Q. Okay. Have you ever done field
15:30:46 9 training for any police officers in C District?

15:30:49 10 A. I've never been a field training
15:30:52 11 officer, no.

15:30:52 12 Q. Okay. As a lieutenant, what would you
15:30:55 13 expect a field training officer to be discussing
15:30:57 14 with their trainee in this situation?

15:31:00 15 MS. HUGGINS: Form.

15:31:00 16 THE WITNESS: Again, I have never been
15:31:03 17 trained as a field training officer, so I don't
15:31:06 18 know what that field training officer has been
15:31:10 19 trained to discuss or do or the -- the steps that
15:31:17 20 they would take to ensure that the trainee is
15:31:20 21 getting everything they need or how to respond to
15:31:25 22 questions that they may have. I don't know what
15:31:27 23 their training encompasses.

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15:31:28 1 BY MR. DAVENPORT:

15:31:29 2 Q. Okay. Now, if Officer Moriarity never
15:31:35 3 asked for the identification of this individual,
15:31:38 4 would you expect the field training officer to tell
15:31:41 5 Officer Moriarity to ask for that identification?

15:31:44 6 MS. HUGGINS: Form.

15:31:45 7 THE WITNESS: Can you repeat that?

15:31:46 8 BY MR. DAVENPORT:

15:31:47 9 Q. If Officer Moriarity never asked for
15:31:49 10 the identification of the complainant, would you
15:31:52 11 expect the field training officer to tell Officer
15:31:56 12 Moriarity to ask for the ID from that complainant?

15:32:00 13 MS. HUGGINS: Form.

15:32:01 14 THE WITNESS: Again, that would depend on
15:32:02 15 the scenario. I don't know what information
15:32:06 16 Officer Moriarity discussed with that person, if he
15:32:08 17 knows who it is, if he's already been identified,
15:32:13 18 if Officer Schulz identified him.

15:32:15 19 I don't know what they're discussing, so
15:32:15 20 I -- I couldn't say what I would expect him to do,
15:32:19 21 because I don't know what information they have
15:32:19 22 right now.

15:32:20 23 BY MR. DAVENPORT:

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15:32:22 1 Q. So if Officer Moriarity did not know
15:32:24 2 the individual and Officer Schulz did not ask the
15:32:27 3 individual for an identification, would you expect
15:32:29 4 Officer Schulz to tell Officer Moriarity to ask for
15:32:32 5 the identification of that individual?

15:32:33 6 MS. HUGGINS: Form.

15:32:34 7 MR. DAVENPORT: What's the form objection?

15:32:35 8 MS. HUGGINS: Same, it calls for -- it calls
15:32:36 9 for speculation.

15:32:37 10 MR. DAVENPORT: No, I'm asking in her
15:32:40 11 capacity as a lieutenant what would she
15:32:42 12 ask -- expect a field training officer to do.

15:32:42 13 MS. HUGGINS: You may disagree with my form
15:32:44 14 objection. I'm simply making it on the record.
15:32:46 15 I've not prevented her from answering that question
15:32:49 16 and I'm trying to do it in as minimal way as
15:32:51 17 possible as to not influence her testimony.

15:32:54 18 So I'm not going to debate with you my form
15:32:58 19 objections. You can proceed and ask her questions
15:33:00 20 if you would like.

15:33:00 21 MR. DAVENPORT: Well, I just want to make
15:33:01 22 sure that the record is clear exactly what your
15:33:02 23 objection is and then I can make my response to

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15:33:05 1 your objection.

15:33:06 2 MS. HUGGINS: No, I'm not debating you.

15:33:09 3 This is an officer's deposition, please proceed
15:33:11 4 with her deposition. I'm not going to debate you
15:33:12 5 right now.

15:33:13 6 MR. DAVENPORT: So just so --

15:33:15 7 MS. HUGGINS: You're distracting from your
15:33:15 8 own deposition.

15:33:17 9 MR. DAVENPORT: Just so that way we're
15:33:17 10 clear, Ms. Huggins, your objection is form,
15:33:19 11 speculation.

15:33:20 12 MS. HUGGINS: As I stated on the record.

15:33:22 13 MR. DAVENPORT: Okay. Can you please read
15:33:24 14 back the last question.

15:33:26 15 (The above-requested question was then read
15:34:21 16 by the reporter.)

15:34:21 17 THE WITNESS: I would -- again, with the
15:34:24 18 field training, I don't know that Officer
15:34:29 19 Schulz -- like, again, it's speculation and there's
15:34:32 20 a million different things that can happen while
15:34:34 21 investigating. At some point the identification of
15:34:38 22 the complainant would need to be made.

15:34:40 23 BY MR. DAVENPORT:

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15:34:41 1 Q. Okay. That works. Just at some point
15:34:43 2 identification would need to be made of that
15:34:46 3 individual, correct?

15:34:47 4 A. Correct.

15:34:47 5 (Playing video.)

15:34:47 6 Q. Okay. Now, Officer McDermott pulled
15:34:55 7 her vehicle up; do you see that?

15:34:57 8 A. Yes.

15:34:57 9 Q. Do you know why she pulled her vehicle
15:35:00 10 up?

15:35:00 11 A. It appears to speak to Officer
15:35:03 12 Moriarity.

15:35:03 13 Q. Okay. Do you have any idea what
15:35:07 14 Ms. McDermott said to Officer Moriarity?

15:35:09 15 A. I do not.

15:35:11 16 Q. Did you say anything to Officer
15:35:14 17 Moriarity?

15:35:14 18 A. Not that I could recall.

15:35:20 19 Q. Okay. So I'm now going to show you
15:35:30 20 what has been marked as Exhibit 11 with the last
15:35:35 21 four digits 2529.

15:35:38 22 So when did you first see or did you ever
15:35:41 23 see Mr. Kistner enter the street?

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15:35:45 1 A. I did not ever see him enter the
15:35:48 2 street.

15:35:48 3 Q. Okay. Did you ever see Mr. Kistner
15:35:51 4 before he entered the street?

15:35:53 5 A. No.

15:35:53 6 Q. What were you doing at this incident?

15:35:56 7 A. I don't recall exactly what I was doing
15:35:59 8 at that moment.

15:35:59 9 Q. Okay. What -- were you looking forward
15:36:05 10 at this time?

15:36:08 11 A. I don't recall. I just know that I
15:36:13 12 didn't see him and I -- at all.

15:36:17 13 Q. Okay.

15:36:17 14 A. I don't recall seeing him at all.

15:36:19 15 Q. Okay. Did you hear Officer McDermott
15:36:22 16 say that she saw an individual out in the street?

15:36:26 17 A. Not that I could recall.

15:36:28 18 Q. Do you recall anything that was said by
15:36:32 19 Mr. Kistner to anybody while he was out in the
15:36:35 20 street?

15:36:35 21 A. No.

15:36:36 22 Q. Okay. Do you recall any of the
15:36:39 23 officers saying anything to Mr. Kistner while he

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15:36:42 1 was in the street?

15:36:43 2 A. No.

15:36:44 3 Q. Okay. Do you know, were you on your
15:36:55 4 way to go somewhere after this call prior to, you
15:36:59 5 know, the events that transpired shortly after?

15:37:03 6 A. Not that I could recall. After the
15:37:05 7 event?

15:37:05 8 Q. Well, do you recall, were you
15:37:10 9 dispatched to another location from Schmarbeck?

15:37:14 10 A. Well, from Schmarbeck we did go to
15:37:17 11 ECMC.

15:37:20 12 Q. Were you dispatched prior to any
15:37:23 13 collision between Mr. Kistner and a police vehicle?

15:37:26 14 MS. HUGGINS: Form. You can answer.

15:37:29 15 THE WITNESS: Prior to?

15:37:31 16 BY MR. DAVENPORT:

15:37:32 17 Q. Prior to -- well, after arriving at
15:37:35 18 Schmarbeck and prior to a collision that was made
15:37:38 19 with Mr. Kistner, were you and Officer McDermott
15:37:41 20 dispatched to any other location?

15:37:43 21 A. Not that I could recall.

15:37:44 22 Q. Okay. Do you know if Officer Schulz or
15:37:47 23 Officer Moriarity were dispatched to another

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15:37:50 1 situation?

15:37:50 2 A. I don't recall.

15:37:51 3 Q. Did you ever dispatch to Schmarbeck for
15:37:55 4 the 33 Schmarbeck call?

15:37:58 5 A. I didn't, no.

15:38:00 6 Q. Okay. Did Officer McDermott ever
15:38:03 7 dispatch in for the 33 Schmarbeck call?

15:38:06 8 A. Not that I could recall.

15:38:27 9 Q. Now, Ms. Velez, based on what you just
15:38:30 10 saw right there, was the police vehicle moving
15:38:33 11 after Mr. Kistner was struck?

15:38:36 12 A. It appeared to be so. Well, when
15:38:39 13 Mr. Kistner walked into the vehicle, it appears
15:38:41 14 from this angle of the video to slightly be moving
15:38:46 15 forward.

15:38:46 16 Q. Now, when you were in the police
15:38:48 17 vehicle, did you hear any sort of a noise that
15:38:52 18 indicated that a collision had been made?

15:38:53 19 MS. HUGGINS: Form. You can answer.

15:38:55 20 THE WITNESS: I did hear a noise.

15:38:57 21 BY MR. DAVENPORT:

15:38:57 22 Q. Okay. What sort of a noise was that?

15:38:59 23 A. It was like a -- it sounded like

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15:39:03 1 plastic, like a plastic break.

15:39:05 2 Q. Okay. At the time did you know --

15:39:09 3 A. It wasn't -- I'm sorry.

15:39:09 4 Q. No, it's okay. At the time did you
15:39:12 5 know what that was?

15:39:12 6 A. No.

15:39:13 7 Q. Okay. Did Officer McDermott say
15:39:17 8 anything after you heard that noise?

15:39:19 9 A. She did.

15:39:19 10 Q. What did she say?

15:39:21 11 A. Again, I don't recall if she said that
15:39:22 12 he had put himself into the vehicle or if he had
15:39:25 13 threw himself into the vehicle.

15:39:28 14 I don't remember which word was used, but
15:39:31 15 she stated that he had put himself into the
15:39:33 16 vehicle.

15:39:33 17 Q. Okay. Did she yell that, did she sound
15:39:37 18 excited when she said it?

15:39:39 19 A. I don't remember the exact tone.

15:39:40 20 Q. Okay. Did she say that before you
15:39:44 21 exited the vehicle?

15:39:44 22 A. Yes.

15:39:45 23 Q. Okay. At that time had you seen

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15:39:50 1 Mr. Kistner up until that point of Ms. McDermott
15:39:53 2 yelling that he either threw himself at the police
15:39:56 3 vehicle or -- I'm sorry, what was the other phrase
15:40:01 4 that she may have possibly said?

15:40:03 5 A. Put himself.

15:40:04 6 Q. Okay. So asking the question again.

15:40:07 7 At any point did you see Mr. Kistner before
15:40:10 8 Ms. McDermott said that Mr. Kistner threw himself
15:40:14 9 at the vehicle or put himself into the police
15:40:17 10 vehicle?

15:40:17 11 A. No.

15:40:18 12 Q. Okay. When was the first time that you
15:40:23 13 saw Mr. Kistner?

15:40:23 14 A. On the ground.

15:40:25 15 Q. Was he grabbing any part of his body?

15:40:29 16 A. No.

15:40:31 17 Q. Okay. Where was he positioned relative
15:40:33 18 to the car?

15:40:34 19 A. I recall him laying parallel to the
15:40:37 20 car.

15:40:38 21 Q. Okay. Was Mr. Kistner saying anything?

15:40:45 22 A. Not that I could recall.

15:40:47 23 Q. Did you say anything to Mr. Kistner?

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15:40:49 1 A. No.

15:40:50 2 Q. Okay. Did you perform any sort of a
15:40:55 3 physical assessment of Mr. Kistner or a physical
15:40:59 4 examination?

15:41:00 5 A. When I came around the car, the side of
15:41:03 6 the car, he was moving his body side to side, like
15:41:08 7 rolling side to side.

15:41:09 8 And that's what I could recall that he had
15:41:12 9 the ability to move. Like he had the ability to --
15:41:15 10 to move his arms and legs and his body.

15:41:18 11 Q. Okay. So what does that tell you if
15:41:20 12 he's able to move?

15:41:21 13 A. That he can move. Like it didn't
15:41:24 14 appear from the way he was moving that he had any
15:41:27 15 of his limbs were broken.

15:41:29 16 Q. Okay. Did you perform any sort of an
15:41:32 17 assessment to see if he had a head injury at that
15:41:35 18 time?

15:41:35 19 A. I did not.

15:41:36 20 Q. Okay. Do you know if any of the other
15:41:38 21 officers performed an assessment to see if he had a
15:41:41 22 head injury at that time?

15:41:42 23 A. I do not.

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15:41:42 1 Q. Do you know if Mr. Kistner ever
15:41:45 2 complained of a head injury at Schmarbeck Avenue?

15:41:47 3 A. Not that I could recall.

15:41:48 4 Q. Okay. So why was Mr. Kistner taken to
15:41:52 5 ECMC for a physical assessment?

15:41:54 6 A. For a medical evaluation.

15:41:55 7 Q. What were -- what did you expect them
15:41:57 8 to evaluate?

15:41:58 9 A. To clear him medically, to -- based on
15:42:01 10 him being on the ground rolling back and forth,
15:42:04 11 what I had seen.

15:42:05 12 Q. Okay. Did you have an expectation that
15:42:07 13 they would examine any certain part of his body?

15:42:10 14 A. I'm not a medical professional, so I
15:42:13 15 don't know exactly what -- what criteria they would
15:42:14 16 need to determine the extent of an evaluation.

15:42:18 17 Q. Is a medical examination required for
15:42:21 18 an individual who is on the ground after a
15:42:23 19 collision with a vehicle?

15:42:24 20 MS. HUGGINS: Form. You can answer.

15:42:26 21 THE WITNESS: It would depend. It would
15:42:31 22 depend on -- it could be a multitude of different
15:42:34 23 things.

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15:42:34 1 BY MR. DAVENPORT:

15:42:34 2 Q. Was a physical examination required in
15:42:37 3 this case?

15:42:37 4 A. Based on the officers stating that he
15:42:42 5 put himself into a vehicle and now he's on the
15:42:45 6 ground, it would make sense to have him medically
15:42:49 7 cleared, evaluated.

15:42:49 8 Q. Okay. Was there any sort of a
15:42:52 9 discussion amongst the officers about potential
15:42:55 10 injuries that Mr. Kistner may have had?

15:42:57 11 A. Not that I could recall.

15:42:59 12 Q. Did anybody ever ask Mr. Kistner if
15:43:01 13 anything was hurting him?

15:43:02 14 A. I did not.

15:43:03 15 Q. Did any of the other officers?

15:43:04 16 A. I don't know.

15:43:05 17 Q. Not -- no one asked in your presence,
15:43:08 18 correct?

15:43:08 19 A. Correct.

15:43:08 20 Q. Okay. So, now, watching this vehicle
15:43:12 21 again -- or this video again.

15:43:16 22 A. Or I would say no one asked that I
15:43:22 23 could recall, because there was three other

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15:43:23 1 officers there.

15:43:24 2 Q. Sure. So I want you to watch this
15:43:27 3 video and pay particular attention to your and
15:43:32 4 Ms. McDermott's vehicle and Mr. Kistner as well.

15:43:32 5 (Playing video.)

15:43:32 6 BY MR. DAVENPORT:

15:43:41 7 Q. Did it appear to you that Mr. Kistner
15:43:44 8 intentionally threw himself at the vehicle?

15:43:46 9 A. Yes.

15:43:47 10 Q. And what led you to believe that?

15:43:49 11 A. I could -- it appears that he's
15:43:51 12 reaching his arm out into the vehicle.

15:43:54 13 Q. Would it be possible that he was trying
15:43:56 14 brace himself for a collision?

15:43:59 15 A. I can't speculate what he may have
15:44:02 16 thought. I only see what I see here and what was
15:44:05 17 told to me by officers.

15:44:07 18 Q. I guess I'm just asking is there an
15:44:07 19 alternative explanation for why Mr. Kistner may
15:44:07 20 have stuck his arm out for the police vehicle?

15:44:14 21 MS. HUGGINS: Form.

15:44:14 22 THE WITNESS: Again, in my opinion based on
15:44:16 23 the video and what was told to me by two other

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15:44:19 1 officers, no.

15:44:20 2 BY MR. DAVENPORT:

15:44:20 3 Q. So let's exclude anything that was told
15:44:24 4 to you by the other officers. Based on what you
15:44:27 5 see in this video, does it appear that Mr. Kistner
15:44:30 6 intentionally threw himself at the vehicle?

15:44:31 7 A. Unfortunately I can't take away my
15:44:33 8 thoughts on what was told to me and the video now.

15:44:39 9 In retrospect I can't -- what I see and what
15:44:39 10 I've been told is the totality of what my opinion
15:44:42 11 is based on.

15:44:43 12 Q. How much of your opinion is based on
15:44:45 13 what you see in this video? Again, does it look as
15:44:54 14 if Mr. Kistner intentionally threw himself at that
15:44:58 15 police vehicle?

15:44:58 16 MS. HUGGINS: Form.

15:45:00 17 THE WITNESS: Again, from my perspective
15:45:02 18 this -- the perception of this video -- the angle
15:45:05 19 of this video is difficult.

15:45:06 20 But as I said, my opinion on what -- what I
15:45:11 21 can see on here he appears to reach into the
15:45:14 22 vehicle.

15:45:14 23 BY MR. DAVENPORT:

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15:45:14 1 Q. Does it at least appear questionable
15:45:15 2 that Mr. Kistner may have not intentionally thrown
15:45:18 3 himself at a police vehicle?

15:45:19 4 MS. HUGGINS: Form.

15:45:19 5 THE WITNESS: Not from my perspective.

15:45:22 6 BY MR. DAVENPORT:

15:45:22 7 Q. Okay. If it was questionable whether
15:45:24 8 an individual threw himself at a police vehicle or
15:45:27 9 if the police vehicle negligently struck him, would
15:45:30 10 you expect there to be an investigation?

15:45:32 11 A. Can you repeat that.

15:45:33 12 Q. If there was a question as to whether
15:45:36 13 the police vehicle negligently struck the
15:45:39 14 individual or if the individual intentionally threw
15:45:41 15 himself at the police vehicle, would you expect
15:45:43 16 there to be an investigation by the accident
15:45:46 17 investigation unit?

15:45:46 18 A. That's speculative as well. There's a
15:45:50 19 lot of ifs in there. So when we have two officers
15:45:53 20 who witnessed the event that I have knowledge of at
15:46:00 21 that point, no.

15:46:01 22 If a pedestrian is struck by a vehicle, it's
15:46:05 23 a different -- different scenario and yes.

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15:46:08 1 Q. Okay. So I understand what these
15:46:13 2 police officers told you at the scene, but I guess
15:46:17 3 taking yourself away from what this video is, if
15:46:22 4 there is a question at the scene as to whether an
15:46:25 5 officer observed a police vehicle negligently
15:46:29 6 striking an individual or another police officer
15:46:32 7 saying that that individual threw himself at the
15:46:35 8 police vehicle, would you expect there to be an
15:46:38 9 investigation --

15:46:38 10 MS. HUGGINS: Form.

15:46:39 11 BY MR. DAVENPORT:

15:46:39 12 Q. -- of that situation?

15:46:42 13 A. As a patrol officer, I would defer to
15:46:45 14 the supervisor and give them all the information we
15:46:48 15 have and let them determine whether or not accident
15:46:53 16 investigation needs to come out or what type of
15:46:55 17 investigation would need to -- need to be done, if
15:46:57 18 any.

15:46:58 19 Q. As a supervisor, if you had one of your
15:47:00 20 police officers in C District telling you that the
15:47:02 21 individual intentionally threw himself at the
15:47:04 22 police vehicle and you had another police officer
15:47:08 23 who was at the scene who said that the police

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15:47:09 1 vehicle negligently struck the individual, would
15:47:12 2 you order an investigation of that situation?

15:47:14 3 MS. HUGGINS: Form.

15:47:17 4 THE WITNESS: You have two sworn officers
15:47:18 5 giving two different version of events, I would
15:47:20 6 come to the scene to determine what type of
15:47:22 7 investigation had been conducted at that point to
15:47:24 8 determine what fact pattern we have and then make a
15:47:27 9 decision.

15:47:27 10 BY MR. DAVENPORT:

15:47:28 11 Q. But you would go to the scene, correct?

15:47:30 12 A. Yes.

15:47:30 13 (Playing video.)

15:47:30 14 Q. Okay. Do you know who this individual
15:47:42 15 is who's on the sidewalk and now appearing to run
15:47:45 16 towards the street?

15:47:46 17 A. I believe that's Mr. Kistner's son.

15:47:48 18 Q. And what led you to believe that that
15:47:51 19 was Mr. Kistner's son?

15:47:52 20 A. Because I recall him being there.

15:47:54 21 Q. Did he say anything to you that would
15:47:58 22 have made you think that this was Mr. Kistner's
15:47:59 23 son?

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15:47:59 1 A. I believe he was yelling, not to me
15:48:01 2 specifically, but I believe he was yelling dad.

15:48:04 3 Q. Okay. Did you hear him make those
15:48:08 4 statements?

15:48:08 5 A. I heard him say dad, I believe it was
15:48:11 6 dad.

15:48:12 7 Q. Okay.

15:48:13 8 A. Not at this point, but when we were
15:48:16 9 obviously out of the vehicle.

15:48:18 10 Q. Now, you saw yourself exit the police
15:48:22 11 vehicle there, correct?

15:48:24 12 A. Yes.

15:48:24 13 Q. At this time, did you know that there
15:48:29 14 was an individual who was lying on the ground next
15:48:32 15 to a police vehicle?

15:48:33 16 A. Yes.

15:48:33 17 Q. Okay. And how did you know that?

15:48:35 18 A. Because when I heard the noise, Officer
15:48:38 19 McDermott had said he had -- like I said, I can't
15:48:41 20 remember the exact verbiage he put himself or threw
15:48:44 21 himself into the vehicle, so I -- I knew he was
15:48:46 22 there.

15:48:47 23 Q. Okay. As you're exiting the police

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15:48:49 1 vehicle, what -- what are you going to go do at
15:48:53 2 this situation?

15:48:55 3 A. I'm going to see what happened.

15:48:57 4 Q. Are you going to go examine the
15:49:00 5 individual on the ground?

15:49:01 6 A. I went around and -- visual and I --
15:49:08 7 oh, I'm sorry. I went -- I was going to go around
15:49:10 8 to do a visual to see what had happened.

15:49:12 9 Q. Okay. Now, at this time, did you see
15:49:19 10 the individual who you've identified as
15:49:23 11 Mr. Kistner's son?

15:49:24 12 A. I don't know if I seen him at that
15:49:27 13 point. He walked past me, but I don't know if I
15:49:30 14 made eye -- you know what I mean, if I had made eye
15:49:33 15 contact with him at that point.

15:49:34 16 Q. Were you ever concerned about that
15:49:36 17 individual at any point when you saw him run past
15:49:40 18 your police vehicle?

15:49:42 19 A. As I said, I don't -- at that moment I
15:49:49 20 don't exactly recall if I had made eye contact with
15:49:53 21 him as he went by.

15:49:53 22 Q. At any point when Mr. Kistner's son was
15:49:56 23 out in the street, did you ever feel concern for

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15:49:58 1 your safety?

15:49:59 2 A. At that point?

15:50:01 3 Q. Well, at any point that Mr. Kistner's
15:50:04 4 son was out in the street, did you ever feel that
15:50:08 5 your safety was threatened?

15:50:10 6 A. Not that I could recall.

15:50:23 7 Q. Now, knowing at that time that there
15:50:27 8 was an individual where there was a collision with
15:50:30 9 the police vehicle and that he was on the ground,
15:50:33 10 why did you not -- it appears that you're walking,
15:50:37 11 you're standing still, you're looking at Officer
15:50:41 12 Schulz and Officer Moriarity, did you have any
15:50:44 13 concern for the individual's potential physical
15:50:46 14 condition at that time?

15:50:47 15 A. Well, as I was looking at Officer
15:50:50 16 Schulz, he as he was walking toward me, as I was
15:50:53 17 coming around the front of the car, that's when he
15:50:55 18 told me I had seen the whole thing. He said I had
15:50:57 19 seen him throw himself into the patrol vehicle.

15:51:01 20 Q. And that was Officer Schulz that told
15:51:04 21 you that?

15:51:05 22 A. Yes.

15:51:05 23 Q. Okay. Did Officer Moriarity say

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15:51:09 1 anything at that time?

15:51:10 2 A. Not that I could recall.

15:51:14 3 Q. Okay. So Officer Schulz would have
15:51:17 4 made that statement to you. Was it at this point
15:51:17 5 right here where it appears that you're facing
15:51:35 6 Officer Schulz and Officer Moriarity that that
15:51:35 7 statement was made to you?

15:51:36 8 A. Most likely, yes.

15:51:38 9 Q. Okay. So now you've had two officers
15:51:42 10 that have told you that Mr. Kistner intentionally
15:51:45 11 threw himself at the police vehicle, correct?

15:51:47 12 A. Correct.

15:51:47 13 Q. Okay. So with that knowledge, what
15:51:51 14 steps would you take knowing that there's an
15:51:55 15 individual on the ground?

15:51:56 16 A. Well, having that information now and
15:51:59 17 when I come around the car, I see the individual.
15:52:01 18 The two officers who had actually eye witnessed the
15:52:06 19 incident, they're -- they're there.

15:52:09 20 So I have no -- aside from what they told me
15:52:13 21 at that point, I didn't observe anything, so they
15:52:13 22 would have more information and they would know
15:52:17 23 better how to proceed than I would, because I

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15:52:18 1 didn't see it.

15:52:19 2 Q. If you have two officers that are
15:52:21 3 telling you that somebody intentionally threw
15:52:24 4 themselves at a police vehicle, is that a crime to
15:52:27 5 throw yourself at a police vehicle?

15:52:29 6 A. It could be.

15:52:30 7 Q. Okay. Would you arrest that
15:52:31 8 individual?

15:52:32 9 A. Depending on the totality of the
15:52:35 10 circumstance.

15:52:35 11 Q. Would you detain that individual?

15:52:37 12 A. Yes.

15:52:37 13 Q. Okay. Would you detain that individual
15:52:39 14 and then determine the totality of the
15:52:42 15 circumstances?

15:52:42 16 A. It depends on the information that we
15:52:42 17 have.

15:52:45 18 Q. Is that what you did in this situation?

15:52:48 19 A. In this situation we had information.
15:52:50 20 Like I said, we had two officers witness what was
15:52:53 21 told to me that this individual threw himself into
15:52:56 22 the vehicle and we had damage to the vehicle. So,
15:52:59 23 yes, he was detained.

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15:53:12 1 (Playing video.)

15:53:12 2 Q. Now, it appears that there's you,
15:53:16 3 Officer Schulz, and Officer Moriarity. You were
15:53:19 4 all around the individual at this point. Was
15:53:22 5 anything being said to Mr. Kistner?

15:53:25 6 A. I don't recall.

15:53:26 7 Q. Did anybody tell Mr. Kistner to get up?

15:53:29 8 A. I don't recall.

15:53:30 9 Q. Did you tell Mr. Kistner to get up?

15:53:32 10 A. I did not.

15:53:33 11 Q. Did anybody tell Mr. Kistner that he
15:53:36 12 would be arrested?

15:53:37 13 A. I don't recall.

15:53:38 14 Q. Did you tell Mr. Kistner that he would
15:53:40 15 be arrested?

15:53:41 16 A. I did not.

15:53:58 17 Q. Now, it appears that either Officer
15:54:00 18 Schulz or Officer Moriarity are reaching down. Are
15:54:07 19 they picking up Mr. Kistner at that point?

15:54:09 20 A. I don't recall.

15:54:09 21 Q. Was Mr. Kistner ever brought into a
15:54:13 22 seated position?

15:54:13 23 A. I don't recall.

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15:54:15 1 Q. If an individual has been struck on
15:54:17 2 their head, would you examine that individual for a
15:54:21 3 head injury while he's lying down on the ground or
15:54:24 4 while he's in a seated position?

15:54:25 5 A. If I had -- that's -- again, it's
15:54:27 6 situational, it's circumstantial.

15:54:30 7 Q. Assuming that there's a potential for a
15:54:32 8 head injury, should that individual be brought to a
15:54:36 9 seated position?

15:54:37 10 MS. HUGGINS: Form.

15:54:37 11 THE WITNESS: Again, that depends on their
15:54:39 12 physical abilities, capabilities, if there's a
15:54:39 13 visible injury, if there's a complaint, if we can
15:54:42 14 see blood, it depends.

15:54:43 15 BY MR. DAVENPORT:

15:54:43 16 Q. But what if -- what if there's an
15:54:46 17 internal injury, should that individual be brought
15:54:49 18 to a seated position?

15:54:50 19 A. I'm not a medical --

15:54:50 20 MS. HUGGINS: Form.

15:54:50 21 THE WITNESS: -- professional.

15:54:53 22 BY MR. DAVENPORT:

15:54:53 23 Q. Do they give you any sort of training

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15:54:56 1 on how to handle these situations?

15:54:57 2 A. We have first aid.

15:54:59 3 Q. Okay. During your first aid training
15:54:59 4 did they ever discuss how to handle an individual
15:55:01 5 who may have an internal head injury while lying
15:55:04 6 down on the ground?

15:55:04 7 A. Yes.

15:55:05 8 Q. Okay. And what do they teach you?

15:55:07 9 A. If we know that they -- they have an
15:55:11 10 injury, they've expressed to us that they have some
15:55:15 11 type of injury that they believe they're immobile
15:55:16 12 and they cannot move, something of that nature,
15:55:17 13 then we would not move them.

15:55:20 14 Q. Okay. Now, if that person has
15:55:22 15 expressed to you that they have a head injury and
15:55:26 16 they're still rolling down on the ground, would you
15:55:30 17 bring that person into a seated position?

15:55:31 18 A. It depends on their physical
15:55:35 19 capabilities, abilities. If we ask them to and
15:55:38 20 they can, it depends.

15:55:40 21 Q. Okay. Was -- were handcuffs put on
15:55:45 22 Mr. Kistner by any of the officers?

15:55:47 23 A. I believe so.

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15:55:48 1 Q. And who put those handcuffs on

15:55:51 2 Mr. Kistner?

15:55:51 3 A. I do not recall.

15:55:52 4 Q. Okay. How was Mr. Kistner handcuffed,

15:55:55 5 was he handcuffed while he was sitting down, while

15:55:59 6 he was laying down on the ground?

15:56:00 7 A. I don't recall.

15:56:01 8 Q. Was he handcuffed while he was standing

15:56:04 9 up?

15:56:04 10 A. I don't recall.

15:56:05 11 Q. How was Mr. Kistner brought from a

15:56:07 12 seated position to a standing position?

15:56:07 13 A. I don't recall how Mr. Kistner was

15:56:09 14 brought up.

15:56:09 15 Q. Did you bring --

15:56:10 16 A. If he was.

15:56:11 17 Q. Did you bring Mr. Kistner into -- from

15:56:13 18 a seated position to a standing position?

15:56:16 19 A. I did not.

15:56:17 20 Q. Do you recall who did bring Mr. Kistner

15:56:20 21 from a seated position to a standing position?

15:56:20 22 A. I don't recall what officer handcuffed

15:56:22 23 him or how he was brought up. I'm not certain.

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15:56:25 1 Q. Now, at any point during this was there
15:56:33 2 any discussion that was had between any of the
15:56:36 3 officers at this point about what just happened?

15:56:38 4 A. I don't recall.

15:56:40 5 Q. Did Mr. Kistner say anything to any of
15:56:42 6 the officers?

15:56:43 7 A. I don't recall.

15:56:48 8 Q. Was he being belligerent?

15:56:51 9 A. I don't recall.

15:56:54 10 Q. What was Mr. Kistner's son saying at
15:56:58 11 this point?

15:56:58 12 A. I don't know.

15:57:01 13 Q. Based on where is he positioned, is he
15:57:04 14 in the police scene?

15:57:06 15 A. Pardon?

15:57:07 16 Q. Based on where Mr. Kistner's son is
15:57:10 17 located, is he within the police scene?

15:57:13 18 A. Well, they're in the midst of bringing
15:57:16 19 him over to the other vehicle, so it's technically
15:57:21 20 part of where we were working.

15:57:27 21 Q. Where Mr. Kistner's son is standing is
15:57:29 22 part of where the officers are working?

15:57:29 23 A. Well, they're going to go past that

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15:57:32 1 area, so technically for right now as
15:57:33 2 they're -- they're moving this individual, that's
15:57:35 3 our -- our workable area.

15:57:36 4 So the scene where the incident happened is
15:57:38 5 where the patrol car is, but we're still in control
15:57:41 6 of everything happening while we have someone in
15:57:45 7 our custody and make sure they safely get to where
15:57:48 8 they need to go.

15:57:49 9 Q. Okay. Is Mr. Kistner's son doing
15:57:52 10 anything threatening at this point?

15:57:54 11 A. I can't see exactly what he's doing.
15:57:54 12 His back is facing me right now --

15:57:54 13 Q. Does it appear from the video --

15:57:58 14 A. -- from this video.

15:57:58 15 Q. -- that Mr. Kistner's son is doing
15:58:00 16 anything threatening at this point?

15:58:01 17 A. I can't speculate what he's doing that
15:58:05 18 I cannot see.

15:58:08 19 Q. But you agree that you can't see
15:58:10 20 anything that is threatening any of the officers,
15:58:14 21 correct?

15:58:14 22 A. Again, I don't know what he's doing or
15:58:19 23 saying, if he's saying or doing anything, because I

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15:58:24 1 can't tell and I don't recall.

15:58:24 2 Q. Sure. Do you see Mr. Kistner's son's
15:58:28 3 right hand?

15:58:29 4 A. I do.

15:58:30 5 Q. Okay. And is it positioned where his
15:58:34 6 hand is on the right side of his face?

15:58:39 7 A. Yes.

15:58:40 8 Q. Okay. What do you think he's doing?

15:58:46 9 MS. HUGGINS: Form.

15:58:47 10 THE WITNESS: I have no idea what he's
15:58:49 11 doing.

15:58:50 12 BY MR. DAVENPORT:

15:58:50 13 Q. When you hold a cell phone, do you hold
15:58:53 14 it up next to your ear?

15:58:55 15 A. Yes.

15:58:56 16 Q. Is it possible that he has a cell phone
15:58:59 17 in his right hand and it's next to his ear?

15:59:02 18 MS. HUGGINS: Form.

15:59:03 19 THE WITNESS: It could be.

15:59:04 20 BY MR. DAVENPORT:

15:59:04 21 Q. Okay. Now, would there be any reason
15:59:09 22 for any of the officers to go speak with this
15:59:11 23 individual while he's on his cell phone?

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15:59:15 1 A. I don't know what the other officers,
15:59:17 2 what information they have, what they're observing,
15:59:21 3 if a conversation ensued that would cause them to.
15:59:23 4 I don't know.

15:59:23 5 Q. What kind of a conversation would ensue
15:59:25 6 where an officer would need to go speak with an
15:59:29 7 individual who's on his cell phone?

15:59:29 8 A. I don't know if he's engaging them
15:59:30 9 first. I don't know. It's speculation. It
15:59:32 10 depends on if he asked them to come over.

15:59:36 11 We have lots of times when people are on
15:59:37 12 their cell phone and they still want to talk to us.

15:59:40 13 They sometimes are still with 911 on the
15:59:41 14 phone and they want to talk to us. And we're like
15:59:42 15 we're here now, you can hang up the phone.

15:59:43 16 And so there's lots of times where we engage
15:59:46 17 and they're on their phone or they engage us and
15:59:48 18 they're on their phone.

15:59:48 19 Q. Do you recall any time where
15:59:50 20 Mr. Kistner's son asked to speak with a police
15:59:53 21 officer?

15:59:53 22 A. I don't recall.

15:59:53 23 Q. Okay. Do you know what officer is

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16:00:03 1 facing towards Mr. Kistner's son?

16:00:07 2 A. I believe that's Officer Schulz.

16:00:10 3 Q. Okay. Do you have -- do you know what
16:00:13 4 Mr. Schulz is saying to Mr. Kistner's son?

16:00:16 5 A. I do not.

16:00:24 6 Q. Now, at this time, does it appear that
16:00:26 7 Mr. Kistner's son is walking away from Mr. Schulz?

16:00:30 8 A. I can't tell, he's half off the video.

16:00:33 9 Q. He's not taking steps towards
16:00:37 10 Mr. Schulz, though, correct?

16:00:37 11 A. If you could back it up, I could see it
16:00:40 12 again.

16:00:40 13 Q. Sure?

16:00:42 14 A. Where he was moving to.

16:00:49 15 Q. At any time did he take steps towards
16:00:53 16 Mr. Schulz before he left the view of the camera?

16:00:55 17 A. He took a few steps to the right and
16:00:59 18 then I couldn't tell.

16:01:03 19 Q. Why would Officer Schulz be following
16:01:06 20 this individual at this point?

16:01:07 21 A. You would have to ask Officer Schulz.

16:01:15 22 Q. At this time, does it appear that
16:01:19 23 Mr. Kistner's son is voluntarily walking out into

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16:01:22 1 the street?

16:01:24 2 A. Possibly, I can't tell.

16:01:27 3 Q. Does it appear that Mr. Schulz has his
16:01:30 4 arm on Mr. Kistner's son?

16:01:32 5 A. There's a line through the middle. I
16:01:35 6 can't tell.

16:01:35 7 Q. I'll try to get rid of that.

16:01:39 8 Well, we'll just continue forward with the
16:01:43 9 video a little bit.

16:02:02 10 At this time, does it appear that Officer
16:02:04 11 Schulz's arm is on Mr. Kistner's son?

16:02:07 12 A. Yes.

16:02:07 13 Q. Okay. Do you think that Mr. Kistner's
16:02:09 14 son is voluntarily walking out into the street?

16:02:12 15 A. I'm not certain if he was voluntarily
16:02:16 16 or Officer Schulz is guiding him. I'm -- again,
16:02:19 17 I'm not -- I don't know the circumstance of what
16:02:21 18 was happening there.

16:02:28 19 Q. Now, at this time, does it appear that
16:02:31 20 Officer Schulz is controlling the movement of
16:02:33 21 Mr. Kistner's son?

16:02:35 22 A. It's off screen. I honestly can't
16:02:37 23 tell.

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16:02:38 1 Q. Does it appear that he has his right
16:02:40 2 hand and his left arm raised towards Mr. Kistner's
16:02:44 3 son?

16:02:44 4 A. I can't see that.

16:02:46 5 Q. We'll get another view of that.

16:02:49 6 A. Okay.

16:02:56 7 Q. What happened right there between
16:02:58 8 Mr. Kistner's son and Mr. Schulz?

16:03:00 9 A. It appears to be some type of furtive
16:03:03 10 movement, but I can't tell the specifics of what
16:03:06 11 happened, it's pixilated.

16:03:08 12 Q. Does it appear that there was some sort
16:03:11 13 of a struggle between the two of them?

16:03:13 14 A. Again, I would describe it as a furtive
16:03:18 15 movement. I can't -- based on with the pixilation
16:03:21 16 of the video, I can't say what exactly was
16:03:24 17 happening there and I don't recall.

16:03:26 18 Q. Okay. Does it appear that there's now
16:03:35 19 another officer who's put their hands on
16:03:39 20 Mr. Kistner's son?

16:03:40 21 A. Could you play it again?

16:03:42 22 Q. Sure. At any point, did you see
16:03:58 23 another officer put their hands on Mr. Kistner's

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16:04:01 1 son?

16:04:02 2 A. Yes.

16:04:02 3 Q. Okay. And would you -- how would you
16:04:06 4 describe what you just saw? Was there any sort of
16:04:11 5 resistance between Mr. Kistner's son and the
16:04:14 6 officers?

16:04:14 7 MS. HUGGINS: Form.

16:04:15 8 THE WITNESS: I -- I can't speculate as to
16:04:21 9 what was happening. I don't -- I don't recall.
16:04:27 10 And this view --

16:04:28 11 BY MR. DAVENPORT:

16:04:28 12 Q. Now, at this time, based on this view,
16:04:31 13 does it appear that you and Officer McDermott are
16:04:33 14 facing whatever is going on between Officer Schulz,
16:04:37 15 Officer Moriarity, and Mr. Kistner's son?

16:04:39 16 A. Yes.

16:04:39 17 Q. Okay. So at any time you and Officer
16:04:43 18 McDermott could have stopped what was transpiring
16:04:46 19 between Officer Schulz, Officer Moriarity, and
16:04:49 20 Mr. Kistner's son?

16:04:50 21 A. Could you repeat that?

16:04:52 22 Q. At any time you or Officer McDermott
16:04:54 23 could have stopped what was transpiring between

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16:04:57 1 Officer Schulz, Officer Moriarity, and

16:04:59 2 Mr. Kistner's son?

16:05:00 3 A. We were present. If we felt there was
16:05:03 4 a need to intervene, we could have, we were there.

16:05:06 5 Q. Okay. Do you recall what Mr. Kistner's
16:05:09 6 son looks like?

16:05:10 7 A. I don't.

16:05:11 8 Q. Do you remember his physical stature?

16:05:14 9 A. I don't.

16:05:15 10 Q. Was he a tall guy, a short guy?

16:05:18 11 A. I don't recall.

16:05:19 12 Q. Was he skinny or was he fat?

16:05:21 13 A. I believe he was more slender, but I
16:05:26 14 don't recall his exact physique.

16:05:29 15 Q. Was he taller or shorter than you?

16:05:32 16 A. I don't recall.

16:05:33 17 Q. How tall are you?

16:05:34 18 A. Five-two.

16:05:39 19 Q. Now, it appears that Officer Schulz is
16:05:44 20 radioing in from his shoulder radio; do you see
16:05:51 21 that?

16:05:51 22 A. Is he the one on the far -- I'm not
16:05:55 23 certain.

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16:05:55 1 MS. HUGGINS: Just ask for a replay.

16:05:57 2 THE WITNESS: Yeah, if you could just replay

16:05:58 3 it.

16:05:58 4 BY MR. DAVENPORT:

16:05:59 5 Q. Sure. Do you see that right there?

16:06:05 6 A. Yes.

16:06:06 7 Q. Does it appear that Officer Schulz is

16:06:09 8 radioing in?

16:06:09 9 A. It appears so, yes.

16:06:11 10 Q. Okay. Do you know what Officer Schulz

16:06:13 11 was radioing in at that point?

16:06:14 12 A. I do not.

16:06:15 13 Q. Okay. Was anything being said amongst

16:06:20 14 the officers?

16:06:22 15 A. I don't recall.

16:06:23 16 Q. Was anything being said to

16:06:26 17 Mr. Kistner's son?

16:06:26 18 A. I don't recall.

16:06:28 19 Q. Why was Mr. Kistner's son standing in

16:06:32 20 the street at this time?

16:06:32 21 A. I don't recall.

16:06:33 22 Q. Why would he have been standing in the

16:06:36 23 street at this time?

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16:06:36 1 A. I don't recall.

16:06:36 2 MS. HUGGINS: Form.

16:06:37 3 THE WITNESS: So I can't speculate.

16:06:39 4 BY MR. DAVENPORT:

16:06:45 5 Q. If there's an individual who is

16:06:47 6 invading a crime scene, would you have that

16:06:51 7 individual then stand where other officers can view

16:06:54 8 that person to detain them?

16:06:57 9 MS. HUGGINS: Form.

16:06:58 10 THE WITNESS: It depends on the situation.

16:07:00 11 BY MR. DAVENPORT:

16:07:01 12 Q. Was Mr. Kistner's son being detained at

16:07:04 13 this time?

16:07:04 14 A. He wasn't in my custody, so I'm not

16:07:08 15 certain. I don't recall what he was doing standing

16:07:10 16 there.

16:07:10 17 Q. Whose custody was he in?

16:07:13 18 A. I don't know if he was in anyone's

16:07:16 19 custody at that point. I'm not certain.

16:07:19 20 Q. Okay. I'm now going to show you what

16:07:22 21 has been marked as Exhibit 11 and the last four

16:07:25 22 numbers are 5233.

16:08:08 23 Now, it appears that there are now five

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16:08:10 1 police officers within the view of this video; do
16:08:10 2 you see that?

16:08:13 3 **A.** Yes.

16:08:13 4 **Q.** Who is that fifth police officer that
16:08:16 5 arrived at the scene?

16:08:16 6 **A.** Officer Dave Santana.

16:08:18 7 **Q.** Okay. Have you worked with Mr. Santana
16:08:19 8 in the past?

16:08:20 9 **A.** Yes.

16:08:21 10 **Q.** Have you ever ridden along with him in
16:08:24 11 the same police vehicle?

16:08:25 12 **A.** Not that I could recall.

16:08:26 13 **Q.** Okay. Do you know why Officer Santana
16:08:28 14 arrived at the scene that day?

16:08:30 15 **A.** I don't.

16:08:30 16 **Q.** Okay. Do you recall what he was saying
16:08:33 17 to you at this time?

16:08:34 18 **A.** I don't.

16:08:36 19 **Q.** Did he have any sort of a conversation
16:08:39 20 with Lieutenant McHugh before he arrived at the
16:08:47 21 scene?

16:08:47 22 **A.** I don't know.

16:08:47 23 **THE REPORTER:** Lieutenant who?

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16:08:47 1 BY MR. DAVENPORT:

16:08:47 2 Q. McHugh.

16:08:48 3 Did any of the officers at the scene have a
16:08:51 4 conversation with Lieutenant McHugh at the scene?

16:08:54 5 A. I believe so, yes.

16:08:55 6 Q. And which officers were they?

16:08:57 7 A. Officer McDermott and Schulz.

16:09:02 8 Q. Do you recall what was said --

16:09:04 9 A. I don't.

16:09:05 10 Q. -- to Mr. McHugh?

16:09:11 11 So after Mr. Kistner has been placed in the
16:09:15 12 back of the police vehicle, what sort of a
16:09:18 13 conversation would be had between officers in this
16:09:20 14 situation?

16:09:21 15 A. I don't recall what the conversation
16:09:23 16 was.

16:09:25 17 Q. Would there have been anything that you
16:09:28 18 would have had to have discussed at this point?

16:09:30 19 MS. HUGGINS: Form.

16:09:31 20 THE WITNESS: Possibly, but I don't recall.

16:09:34 21 BY MR. DAVENPORT:

16:09:41 22 Q. Did anybody -- at any point after the
16:09:44 23 complaint summary report was closed for 33

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16:09:49 1 Schmarbeck, did anybody go talk with that
16:09:53 2 complainant again while at the scene of Schmarbeck?

16:09:55 3 A. I'm not certain.

16:10:09 4 Q. Did you see that gesture that was just
16:10:12 5 made by the police officer who's closest to the
16:10:15 6 camera at this point?

16:10:16 7 A. No, could you back it up.

16:10:18 8 Q. Well, with my curser on this
16:10:21 9 individual, I just want you to focus on that
16:10:25 10 individual. Now, did you see his left hand right
16:10:25 11 there?

16:10:33 12 A. Uh-huh, yes.

16:10:34 13 Q. Okay. What sort of a gesture is he
16:10:37 14 making?

16:10:40 15 A. He moved his arm from left to right.

16:10:42 16 Q. Okay.

16:10:44 17 A. Or she. I don't know who that is.

16:10:46 18 Q. Was he discussing the incident at that
16:10:49 19 point?

16:10:49 20 A. I don't recall.

16:10:53 21 Q. At any point before you arrived at
16:10:56 22 ECMC, did you and the other officers discuss about
16:10:59 23 what you saw on Schmarbeck Avenue?

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16:11:03 1 A. Possibly, I just don't recall it. I
16:11:07 2 don't recall the content or the context of
16:11:11 3 the -- of the conversation.

16:11:11 4 Q. What's the physical stature of
16:11:14 5 Mr. Santana, is he a big guy?

16:11:17 6 A. He's taller than me.

16:11:20 7 Q. What's his weight, is he a skinny guy,
16:11:23 8 a bigger guy?

16:11:25 9 A. He's medium. I can't estimate his
16:11:25 10 weight.

16:11:25 11 Q. Okay.

16:11:30 12 A. I would say medium.

16:11:31 13 Q. How long has Officer Santana worked in
16:11:34 14 the C District?

16:11:35 15 A. I don't know.

16:11:36 16 Q. Has he worked continuously in the C
16:11:40 17 District since January 1st of 2017?

16:11:43 18 A. I believe so.

16:11:45 19 Q. Okay. Have you had any conversations
16:11:51 20 with Officer Santana since January 1st of 2017
16:11:55 21 regarding this incident?

16:11:58 22 A. Aside from scheduling and if he has
16:12:05 23 appearances coming up, no.

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16:12:06 1 Q. Okay. Have you had any discussions
16:12:08 2 with any of the officers in the City of Buffalo
16:12:12 3 Police Department regarding this incident with
16:12:15 4 Mr. Kistner?

16:12:15 5 A. Not that I could recall.

16:12:16 6 Q. No discussions were had after a news
16:12:20 7 report came out regarding this incident?

16:12:23 8 A. With other officers, not that I could
16:12:26 9 recall.

16:12:26 10 Q. That you were present for?

16:12:28 11 A. Correct.

16:12:28 12 Q. Okay. Now, it appears that you are all
16:12:34 13 dispersing at this point. Did you know that you
16:12:36 14 would be going to ECMC from Schmarbeck?

16:12:39 15 A. I believe so, yes.

16:12:41 16 Q. Why isn't Officer Santana going with
16:12:45 17 you guys -- with you officers to ECMC?

16:12:50 18 A. I -- I don't know. We wouldn't need
16:12:53 19 him to come with us, but I don't know exactly why
16:12:57 20 he didn't come.

16:12:58 21 Q. Okay. Why does it require four
16:13:00 22 officers to transport Mr. Kistner to ECMC?

16:13:03 23 A. Sometimes both cars will go up. It's

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16:13:07 1 not uncommon.

16:13:08 2 Q. Have you ever experienced that before
16:13:11 3 where two patrol vehicles are used to transport one
16:13:15 4 individual to ECMC besides January 1st of 2017?

16:13:19 5 A. Yes, I've seen it before.

16:13:20 6 Q. Have you ever participated, have you
16:13:22 7 ever been a passenger in that vehicle or driven a
16:13:26 8 vehicle where there's been more than one patrol car
16:13:29 9 to transport an individual?

16:13:30 10 A. Yes.

16:13:31 11 Q. Okay. How many times has that
16:13:31 12 happened?

16:13:31 13 A. I don't recall a specific number of
16:13:34 14 times.

16:13:34 15 Q. Is it more or less than five?

16:13:35 16 A. I would say more than five.

16:13:37 17 Q. Is it more or less than 10?

16:13:41 18 A. I -- I don't know. I don't recall. I
16:13:46 19 can't put an exact number on it.

16:13:48 20 Q. More or less than 20?

16:13:51 21 A. Possibly more. I've been on for about
16:13:54 22 seven years now, so.

16:13:55 23 Q. More or less than 50?

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16:13:57 1 A. Maybe, possibly less than 50.

16:14:00 2 Q. More or less than a hundred?

16:14:03 3 A. Possibly, possibly less.

16:14:08 4 Q. Okay. Is there any sort of a

16:14:23 5 circumstance that would -- that would indicate to

16:14:27 6 you as a police officer that more than one police

16:14:31 7 vehicle is required to transport an individual to

16:14:35 8 ECMC?

16:14:35 9 A. Could you repeat that?

16:14:36 10 Q. Is there anything that you would

16:14:38 11 observe as a police officer that would tell you

16:14:38 12 that more than one patrol vehicle is required to

16:14:41 13 transport an individual to ECMC?

16:14:43 14 A. Required, no. I mean, not required.

16:14:45 15 It would -- it depends, it's circumstantial.

16:14:47 16 Q. On January 1st of 2017 were two patrol

16:14:51 17 vehicles required to transport Mr. Kistner to ECMC?

16:14:54 18 A. Required, not that I can recall, no.

16:14:57 19 Q. So it would have been voluntary that

16:15:00 20 for one of the patrol vehicles to have gone to

16:15:04 21 ECMC?

16:15:04 22 A. Correct. But, again, I don't remember

16:15:06 23 the exact -- the -- the totality of that

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16:15:10 1 circumstance. I'm not certain at what
16:15:19 2 point -- like I said, sir, like in the -- in the
16:15:22 3 CAD call, primary -- primary officer was changed.

16:15:25 4 There are conversations that I don't recall
16:15:28 5 that were had with other officers. So at that
16:15:31 6 point I don't exactly recall why both cars went up.

16:15:34 7 It wouldn't have been required, but I don't
16:15:37 8 recall the exact reasoning for both cars going up,
16:15:40 9 but it's not completely uncommon.

16:15:43 10 Q. Is it more typical where the injuries
16:15:46 11 are more serious that two patrol vehicles would be
16:15:48 12 required to go to ECMC?

16:15:48 13 A. If injuries were deemed to be more
16:15:50 14 serious, an ambulance would have been required to
16:15:57 15 take somebody up. We wouldn't transport them.

16:16:00 16 And possibly too, depending on how many
16:16:05 17 people were there. It's circumstantial, it
16:16:06 18 depends.

16:16:06 19 Q. Under what circumstances would an
16:16:11 20 officer cancel an ambulance and drive that
16:16:15 21 individual to ECMC himself?

16:16:17 22 A. It would depend.

16:16:18 23 Q. In this situation why was an ambulance

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16:16:20 1 canceled and Mr. Kistner driven to ECMC by Officer
16:16:24 2 Schulz and Officer Moriarity?

16:16:24 3 A. You would have to ask the officer who
16:16:25 4 canceled the ambulance.

16:16:26 5 Q. Did you agree that an ambulance should
16:16:29 6 be canceled at that point?

16:16:31 7 A. I wasn't a part of that decision, so
16:16:34 8 and, again, I didn't witness the incident. And
16:16:36 9 other officers were present who did and that was
16:16:37 10 the determination that was made.

16:16:39 11 Q. If during your physical examination of
16:16:42 12 Mr. Kistner you deemed that an ambulance was
16:16:45 13 necessary to bring Mr. Kistner to ECMC, could you
16:16:48 14 have called for an ambulance?

16:16:49 15 A. Based on what I had observed, he was
16:16:53 16 moving, he was able to stand up, he walked over to
16:16:57 17 the patrol car, he sat down. So at that point he
16:17:01 18 was mobile and he was moving.

16:17:02 19 Q. Well, Ms. Velez --

16:17:04 20 A. He was conscious.

16:17:05 21 Q. Ms. Velez, my question was if you
16:17:08 22 deemed it necessary to call an ambulance when
16:17:11 23 another officer had canceled that ambulance, could

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16:17:14 1 you call and have that ambulance arrive?

16:17:17 2 A. If I deemed it necessary that he needed
16:17:20 3 an ambulance and another officer canceled the
16:17:24 4 ambulance, if I deemed it necessary, then I could
16:17:25 5 always call an ambulance.

16:17:26 6 Q. Okay. Do you know why Officer Schulz
16:17:29 7 or Officer Moriarity or Officer McDermott canceled
16:17:33 8 the ambulance?

16:17:33 9 A. I do not.

16:18:14 10 (Playing video.)

16:18:14 11 Q. Okay. Do you recognize the individual
16:18:15 12 who is now standing on the sidewalk on the left
16:18:18 13 part of the screen?

16:18:18 14 A. Yes.

16:18:18 15 Q. And who is that individual?

16:18:19 16 A. Mr. Kistner's son.

16:18:19 17 Q. Okay. Do you know who the officer is
16:18:22 18 who is now facing Mr. Kistner's son?

16:18:24 19 A. I believe that's Officer Schulz.

16:18:26 20 Q. Okay. Did you see Mr. Kistner's son
16:18:36 21 raise his left arm?

16:18:38 22 A. Could you play it back?

16:18:39 23 Q. Yes. Do you see Mr. Kistner's son

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16:19:03 1 raise his left arm?

16:19:04 2 A. Yes.

16:19:05 3 Q. Okay. Did he also take steps away from
16:19:08 4 Mr. Schulz?

16:19:08 5 A. Yes.

16:19:09 6 Q. Based on those two actions by
16:19:12 7 Mr. Kistner's son, do you think that he was looking
16:19:14 8 to speak with Mr. Schulz?

16:19:16 9 A. I don't know what he was doing.

16:19:18 10 Q. If an individual raises their left arm
16:19:21 11 and starts to walk away from you as a police
16:19:25 12 officer, do you think that that individual wants to
16:19:26 13 speak with you?

16:19:26 14 A. Possibly, they could. I don't know
16:19:28 15 what he's doing. There's -- he could be saying
16:19:32 16 wait a minute, hold on, I still want to talk. I
16:19:35 17 don't know. I don't recall.

16:19:35 18 Q. Would you follow that individual if
16:19:37 19 they took steps away from you and put their left
16:19:40 20 arm up and said wait a minute?

16:19:43 21 A. It depends.

16:19:46 22 Q. I'm sorry. Ms. Velez, can you watch
16:19:50 23 the video?

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16:19:51 1 A. Yes, I didn't know if you had more
16:19:54 2 questions.

16:19:54 3 Q. No, that was it.

16:20:23 4 Now, watching this video, it appears -- does
16:20:25 5 it appear that Mr. Kistner's son has his right arm
16:20:30 6 raised?

16:20:30 7 And I can go back, if you need me to.

16:20:32 8 A. No, I can see it. It appears that he
16:20:36 9 does have his right arm raised.

16:20:38 10 Q. Okay. And does it appear that his
16:20:40 11 right hand is on the right side of his face?

16:20:43 12 A. Yes.

16:20:44 13 Q. What would you expect Mr. Kistner's son
16:20:48 14 to be doing in this situation if his right arm is
16:20:48 15 raised to his face in that way?

16:20:51 16 A. He could be on the phone.

16:20:53 17 Q. Okay. Now, if Mr. Kistner's son is on
16:21:01 18 the phone, what reason would Mr. Schulz have to
16:21:05 19 grab Mr. Kistner's son and drag him back out into
16:21:09 20 the street?

16:21:09 21 MS. HUGGINS: Form.

16:21:10 22 THE WITNESS: You would have to ask Officer
16:21:15 23 Schulz about his interaction at that point.

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16:21:16 1 BY MR. DAVENPORT:

16:21:17 2 Q. Is there anything that Mr. Kistner's
16:21:19 3 son could have said on the phone that would have
16:21:22 4 caused Officer Schulz to drag him out into the
16:21:25 5 street?

16:21:25 6 A. I don't know.

16:21:25 7 Q. Have you ever encountered somebody
16:21:28 8 where you had to drag them out into the street
16:21:29 9 based on something that they said during a phone
16:21:29 10 call?

16:21:30 11 A. Me, personally?

16:21:32 12 Q. You, personally.

16:21:33 13 A. Not that I could recall.

16:21:34 14 Q. Okay. Now, at any time did it appear
16:21:45 15 that Mr. Kistner's son walked out there voluntarily
16:21:49 16 or was he guided out there by Mr. Schulz?

16:21:53 17 A. Can you play it back?

16:21:55 18 Q. I can play it again.

16:21:57 19 A. Thank you.

16:22:20 20 Q. At any time did it appear that
16:22:23 21 Mr. Kistner's son voluntarily walked out into the
16:22:25 22 street?

16:22:25 23 A. It appears as though he was guided by

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16:22:26 1 Officer Schulz.

16:22:28 2 Q. Now, I want you to watch Mr. Kistner's
16:22:35 3 son's right hands and I want you to tell me if at
16:22:40 4 any point it leaves from the right side of his head.

16:22:55 5 At any time did Mr. Kistner's hand leave the
16:22:59 6 right side of his head before Officer Schulz
16:23:05 7 reached across Mr. Kistner's son's body?

16:23:05 8 A. I see his arm away from his head right
16:23:10 9 now at 10:27:15 mark.

16:23:10 10 Q. But would that have been done before or
16:23:13 11 after Officer Schulz reached across Mr. Kistner's
16:23:14 12 son's body?

16:23:14 13 A. It happened so fast and it's pixilated,
16:23:17 14 I can't tell which action was first.

16:23:20 15 Q. I'll play it again and I want you to
16:23:22 16 watch his right hand carefully.

16:23:42 17 Prior to Officer Schulz reaching across
16:23:45 18 Mr. Kistner's son's body, did Mr. Kistner's son's
16:23:49 19 hand ever leave the right side of his face?

16:23:52 20 A. It appears that happened -- it appears
16:23:53 21 as if Officer Schulz's body turns in, the right arm
16:23:59 22 of the subject comes down.

16:24:03 23 Q. When Mr. Schulz turns his body towards

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16:24:07 1 Mr. Kistner's son, Mr. Kistner's son, does
16:24:12 2 Mr. Schulz reach across Mr. Kistner's son's body?

16:24:16 3 MS. HUGGINS: Form.

16:24:16 4 THE WITNESS: I can't tell.

16:24:17 5 BY MR. DAVENPORT:

16:24:18 6 Q. I'll play it again.

16:24:45 7 Prior -- well, in this case when Mr. -- when

16:24:47 8 Mr. Schulz turned his body towards Mr. Kistner's
16:24:50 9 son, did he reach across Mr. Kistner's son's body?

16:24:54 10 A. My answer doesn't change. I can't
16:24:57 11 tell. And it appears to me as if Officer Schulz
16:25:01 12 turns his body, Mr. Kistner's son's arm comes down,
16:25:01 13 his right arm comes down at the same time.

16:25:03 14 Q. Does it appear that Mr. Schulz grabbed
16:25:06 15 something from Mr. Kistner's son?

16:25:09 16 A. I can't tell.

16:25:15 17 Q. Now, I want to play this video again.

16:25:32 18 Now, as this whole exchange is happening between
16:25:36 19 Mr. Schulz and Mr. Kistner's son, I want you to
16:25:40 20 watch and see where are you located at this time,
16:25:56 21 where are you located?

16:25:57 22 A. Top left.

16:25:58 23 Q. Okay. Are you facing the incident at

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16:26:02 1 this point?

16:26:02 2 A. Yes.

16:26:03 3 Q. Okay. Were you facing the incident
16:26:05 4 when Mr. Kistner's son was led out into the
16:26:08 5 driveway or into the street?

16:26:10 6 A. I don't recall.

16:26:31 7 Q. While Mr. Kistner's son is being
16:26:35 8 dragged out into the street, are you facing
16:26:38 9 Mr. Kistner's son and Mr. Schulz?

16:26:40 10 MS. HUGGINS: Form.

16:26:40 11 THE WITNESS: As Mr. Kistner's son is being
16:26:40 12 guided out, what appears to be guided out into the
16:26:43 13 street, I am standing in the middle of the street.
16:26:47 14 I can't tell which way I'm looking and I don't
16:26:49 15 recall.

16:26:49 16 BY MR. DAVENPORT:

16:26:49 17 Q. Okay. Does it appear at this point
16:26:51 18 that Mr. Son -- Mr. Kistner's son was being guided
16:26:56 19 with that exchange right there?

16:26:57 20 And I can replay it again for you.

16:27:01 21 A. I -- I can see it.

16:27:06 22 Q. Is Mr. Kistner's son being guided?

16:27:09 23 A. Mr. Kistner's son looks like he's

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16:27:14 1 pulling away.

16:27:14 2 Q. Does it appear that the officers,
16:27:18 3 Officer Schulz and Officer Moriarity, both have
16:27:21 4 their hands on Mr. Kistner's son?

16:27:24 5 A. At this point it looks like only one
16:27:27 6 officer has their hands on Mr. Kistner's son.

16:27:30 7 Q. At any point does it appear that
16:27:31 8 Mr. Schulz and Mr. Moriarity both have their hands
16:27:33 9 on Mr. Kistner's son?

16:27:33 10 A. Yes.

16:27:34 11 Q. Okay. What are they doing right here?

16:27:40 12 A. They both have their hands on him. I
16:27:44 13 don't know the exact scenario of the situation
16:27:48 14 that's happening. I don't recall it.

16:27:49 15 Q. But you were standing there, correct?

16:27:51 16 A. Correct.

16:27:53 17 Q. And if you thought that there was any
16:27:53 18 incorrect police conduct that was going on at this
16:27:53 19 point, you could have stopped it?

16:27:55 20 A. I could have intervened.

16:27:57 21 Q. Okay. Have you ever taken an
16:27:59 22 individual's cell phone away from them at a police
16:28:03 23 scene, Ms. Velez?

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16:28:08 1 A. I'm trying to think of a specific
16:28:12 2 incident, but I can't recall. I'm sure I have, but
16:28:15 3 I just can't recall anything specific at this time.

16:28:17 4 Q. What reasons would you take away an
16:28:20 5 individual's cell phone at a scene?

16:28:23 6 MS. HUGGINS: Form.

16:28:23 7 THE WITNESS: If we're taking them into
16:28:26 8 custody, we would take their property, they cannot
16:28:29 9 have it if it's evidence.

16:28:30 10 BY MR. DAVENPORT:

16:28:31 11 Q. Was Mr. Kistner's son being taken into
16:28:34 12 custody at this time?

16:28:34 13 A. I don't know what was happening at this
16:28:35 14 time. I don't recall.

16:28:35 15 Q. Was Mr. Kistner's son ever taken into
16:28:39 16 custody at this -- on this day?

16:28:41 17 A. Not that I could recall.

16:28:43 18 Q. Okay. So if Mr. Kistner's son wasn't
16:28:46 19 being taken into custody, why would his cell phone
16:28:48 20 be taken away from him?

16:28:50 21 MS. HUGGINS: Form.

16:28:51 22 THE WITNESS: I don't know that it was taken
16:28:53 23 from him.

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16:28:53 1 BY MR. DAVENPORT:

16:28:54 2 Q. Assuming that a cell phone was taken
16:28:54 3 away from Mr. Kistner's son, why would a cell phone
16:28:57 4 be taken away from him?

16:28:57 5 A. Again, it depends on the situation.

16:28:59 6 Q. Besides if he's being taken into
16:29:02 7 custody, when would -- when would he have his cell
16:29:06 8 phone taken away from him?

16:29:08 9 A. I've already discussed that in
16:29:09 10 different scenarios. If it's evidence, it was used
16:29:11 11 as a weapon. If somebody is using it to obstruct.

16:29:13 12 I'm not -- there's a bunch of different
16:29:14 13 scenarios. It would depend on the circumstance,
16:29:15 14 the situation, the totality of what was happening
16:29:17 15 at the time.

16:29:19 16 Q. How would Mr. Kistner's son have used
16:29:21 17 his cell phone to obstruct what you police officers
16:29:24 18 were doing?

16:29:24 19 MS. HUGGINS: Form.

16:29:24 20 THE WITNESS: I don't know at that time.

16:29:26 21 BY MR. DAVENPORT:

16:29:26 22 Q. Have you ever taken away an
16:29:28 23 individual's cell phone because they were

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16:29:30 1 obstructing what police officers were doing?

16:29:33 2 A. I have not.

16:29:37 3 Q. Now, Ms. Velez -- can we just turn on
16:29:41 4 the -- thank you.

16:30:00 5 Ms. Velez, were you ever paid a witness fee
16:30:05 6 for Mr. Kistner's criminal proceeding?

16:30:07 7 A. A witness fee?

16:30:08 8 Q. Yes.

16:30:09 9 A. No.

16:30:09 10 Q. Okay. Were you paid any sort of a wage
16:30:13 11 involving Mr. Kistner's criminal proceeding for an
16:30:16 12 appearance that you made?

16:30:18 13 MS. HUGGINS: Form.

16:30:19 14 THE WITNESS: I would -- I could get court
16:30:21 15 time if it's on my scheduled day off.

16:30:24 16 BY MR. DAVENPORT:

16:30:24 17 Q. Okay. What is court time?

16:30:27 18 A. It's paid for your appearance at court,
16:30:28 19 it's paid time for your appearance at court.

16:30:30 20 Q. Is that just for criminal matters?

16:30:32 21 A. No.

16:30:32 22 Q. It's for civil matters as well?

16:30:34 23 A. Yes.

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16:30:35 1 Q. Are you being paid a court fee for your
16:30:39 2 appearance today?

16:30:39 3 A. Yes.

16:30:39 4 Q. And is that your normal rate?

16:30:42 5 A. I don't recall exactly what it is.

16:30:44 6 Q. Is today one of your scheduled days off?

16:30:48 7 A. It is.

16:30:49 8 Q. Okay. Are you being paid overtime for
16:30:51 9 your appearance today?

16:30:51 10 A. I know that it's not an overtime rate.

16:30:54 11 Q. Okay. When you appeared for
16:30:57 12 Ms. McDermott's deposition, were you paid an
16:31:01 13 appearance fee or a court fee?

16:31:03 14 MS. HUGGINS: Form.

16:31:04 15 THE WITNESS: I believe I was on duty that
16:31:06 16 day, so, no.

16:31:07 17 BY MR. DAVENPORT:

16:31:07 18 Q. Were you still paid your normal -- your
16:31:09 19 normal duty wage?

16:31:10 20 A. Yes.

16:31:11 21 MR. DAVENPORT: Okay. No further questions.

16:31:24 22 (Deposition concluded at 4:31 p.m.)

23

* * *

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1 I hereby CERTIFY that I have read the
2 foregoing 347 pages, and that they are a true and
3 accurate transcript of the testimony given by me in
4 the above-entitled action on February 26, 2020.

5

6

7

JENNY VELEZ

8

9 Sworn to before me this

10

11 ----- day of -----, 2020.

12

13

14 -----
NOTARY PUBLIC.

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1 STATE OF NEW YORK)

2 ss:

3 COUNTY OF ERIE)

4
5 I DO HEREBY CERTIFY as a Notary Public in and
6 for the State of New York, that I did attend and
7 report the foregoing deposition, which was taken
8 down by me in a verbatim manner by means of machine
9 shorthand. Further, that the deposition was then
10 reduced to writing in my presence and under my
11 direction. That the deposition was taken to be
12 used in the foregoing entitled action. That the
13 said deponent, before examination, was duly sworn
14 to testify to the truth, the whole truth and
15 nothing but the truth, relative to said action.

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LYNNE E. DIMARCO,
Notary Public.

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